359 Defendant next introduced in evidence the following article appearing in K. Lamity's Harpoon of April 1st, 1907, as published in the issue of said paper of said date, viz:

Warm-blooded Man—Clay Pierce.

The Austin Statesman, a Bailey organ owned by John Henry Kirby the Lumber King and Prince of Pines, says:

"Bailey's record in congress is, as we have before said, as clean as a hound's tooth, and the Standard Oil octupus can not destroy him. He will continue faithfully his duty to do as in the past he has ever done it."

So far as the "cleanliness" of the record is concerned, I fully agree with you, though fail to see where the comparison is any compliment to Mr. Bailey. As for the Standard Oil Company "destroying Joe Bailey," such rot is enough to make the aforesaid hound puke up his teeth by the mouthful.

You must take Texas people for infernal fools. The Waters Pierce Oil Company is controlled and principally owned by the Standard Oil Company. Joe Bailey is the best friend the president of the Waters Pierce Oil, alias the Standard Oil Company ever had in Texas. He was the means of its being re-admitted to Texas, and giving it the opportunity of robbing Texas people out of millions of dollars.

In return the Waters Pierce alias the Standard Oil Company has repaid Bailey by lending him thousands of dollars. The only sane reason why the Waters Pierce alias the Standard Oil Company could possibly want to "destroy Bailey" might be the fear that if they remained on the present friendly terms, Joe might borrow every darned cent it had in the treasury and give his unindorsed note for security.

Such gushes of editorial *guano del torro* falls as flat as a wet
360 blanket when one remembers that in his examination before the investigation committee, the P. of P. said that Clay Pierce, the president of the Waters Pierce alias Standard Oil Company was the "only millionaire he knew, who had warm blood enough in his veins to lend a man money and help him out when he was in a close place."

Yes, that is a commendable trait of character in Clay, to lend money to Democratic Senators and lumber kings when they need it. I honor him for having "warm blood," and helping those who help him. Clay has the "warm blood" and also the "warm money," but in securing the latter (through the political influence of Joe Bailey), Mr. Pierce has certainly thrown the "warm soup" into the Democratic voters of Texas, when they had their faces turned in the opposite direction.

Defendant next introduced in evidence the following portions of an article appearing in K. Lamity's Harpoon, of March 1st, 1907, as published in the issue of said paper of said date, viz:

K. Lamity's Harpoon.

Joe Bailey *vs.* Texas Democrats.

If Joe Bailey has not betrayed the trust placed in his hands by the Texas Democracy, then it is impossible for it to be betrayed. He

has, by his own confession, saddled the Standard oil trust on Texas. To make it worse, he seems to be proud of it, and claims as his most intimate friend, the Hon. H. Clay Pierce—manager of the Waters Pierce Oil Company—said company being under the control of the Standard Oil Company. Clay Pierce—the oil magnate—the ac-*mo*wledged perju*ro*r—who dares not visit Texas, as he is
361 now under indictment for swearing to a bald-faced lie in order to get reinstated in Texas, and thus be able *ro* rob the common people—the people who burn oil—out of millions of hard-earned money. This Clay Pierce, the man who has "warm blood in his veins," is Mr. Bailey's dearest friend, and he now desires to prove his innocence of having gone over to the people's enemies by a man who is under indictment right here in Austin, just under the shadow of the room in the capitol where the white-wash is now being prepared to cover up the oil spots on Bailey's senatorial toga. You may smear damp lime over them a foot thick, boys, but that kerosene is bound to show.

Defendant next introduced in evidence the following portion of an article appearing in the Houston Chronicle of Jan. 6th, 1907, as published in the issue of said paper of said date, viz:

"Bailey Repudiated by Travis County.

Democrats in the Capital City of Texas Rebuke Practice of United Senator in Serving the Trusts.—Battle was Hard Fought Against Tremendous Odds.

Special to The Chronicle.

Austin, Texas, Jan. 5.—Travis County repudiated Senator Bailey's methods today by a small majority ranging from one to two hundred votes.

Only about 2000 votes were polled but enough voters turned out to let the balance of the state know that this county s-ands for purity in public official- and a service to be rendered by them that
362 is not tainted with corporation and trust influences.

Senator Bailey has been in the County nearly all the week during which time he made four speeches in explanation of his conduct and close affiliations with the head of the Waters Pierce Oil Company which is a branch of the Standard Oil Company."

and also the following article appearing in said paper of said date:

Standard Oil is know- to be a corrupter of congressmen. Senator Bailey helped Standard Oil and Pierce, president of the Waters Pierce, a branch of the Standard Oil, loaned money to Senator Bailey and gave him rich employment. The most charitable must admit that an investigation is imperative.

What the people of Texas want is a democratic senator who believes in equal rights to all and special privileges to none, not even to Waters Pierce and Standard Oil.

Defendant next introduced in evidence the following cartoon appearing in The Houston Chronicle of Jan. 20, 1907, as published in the issue of said paper of said date, viz:-

AN ALL-EMBRACING SITUATION

Be Not So Evil-Minded and So
Hoodlumas to Try
To Nose Out Any Friendship
Twist Myself and Octopi.

365

Can Senator Bailey be an effective public champion of the people and at the same time the private attorney of Pierce of Waters Pierce and Standard Oil fame?

363 Defendant next introduced in evidence the following portion of an article appearing in the Houston Chronicle of Jan. 7th, 1907, as published in the issue of said paper of said date viz:

Farmer's View of Bailey.

His Letter Shows the Rural Districts to be Well Informed.

Special to The Chronicle.

Cameron, Texas, Jan. 6.—R. W. Cage, a farmer of the Walker creek community, has given out a letter on Senator Bailey which shows that the residents of rural communities are well posted on the Bailey agitation, and are not influenced by the statements and opinions of others. Following is the letter.

To R. Lyles and Others, Cameron, Texas.

GENTLEMEN: You say Senator Bailey has rendered to the people faithful and able services during his 15 years in congress. The Standard Oil Company and the Waters Pierce Oil Company can truthfully say more. Six years ago these two criminal corporations were operating in Texas together under the name of the Waters Pierce Oil Company and were making off the people the shameful profit of 700 per cent. each year on their capital invested, and they were by judgment of the court, driven out and prohibited from longer doing business in Texas, and they were readmitted into Texas by the influence of Senator Bailey. This was worth many million dollars to these two corporations.

Yours truly, R. W. CAGE.

364 Defendant next introduced in evidence the following portion of an article appearing in Houston Chronicle of Jan. 8th, 1907, as published in the issue of said paper of said date, viz:

Bailey says he is above being influenced. He asserts, with flashing eyes and fierce visage, that anyone who even intimates that he (Bailey) can be influenced is an infamous liar. Despite such ferocious declarations, it remains a matter of record that Pierce lied to him (Bailey produced a letter from Pierce to prove it), and that Bailey has never yet called Pierce an infamous liar. He has not so much as whispered in that well-known stage whisper of his: "Pierce, you fibbed to me; you nasty naughty thing!" Of course, there are liars and liars—liars who are too far away to hear you when you hiss "infamous liar!"—liars who are useful for stage purposes, "property" liars as it were, who are convenient for creating spect-ular and grandstand effects—liars who are dead broke, and last, but not least, liars who are touchable for $3,300 the day after you meet them. Figure out for yourself which class Pierce is in.

(Here follows facsimile marked p. 365.)

366 Defendant next offered in evidence the following portion of an article appearing in The Houston Chronicle of Jan. 20, 1907, as published in the issue of said paper of said date, viz:

The Cocke Charges Against Joe Bailey.

San Antonio Representative Says He Has Mailed Them to the Committee.

Several Matters are Mentioned of Which the Public Has Not Previously Heard—Alleged Relations With John W. Gates in Port Arthur Deal and Loans Suggested.

Staff Special.

Austin, Texas, Jan. 19.—Formal charges have been prepared by Representative W. A. Cocke for filing with the Chairman of both the House and Senate investigating committees against Senator Bailey. Mr. Cocke stated tonight that he would mail copies to the committees with a statement that he be allowed to question witnesses, otherwise he would withdraw the charges.

Thirty-six charges are contained in the complaint covering the various official acts of the Senator from the time before or during the Spanish war, when he is alleged to have entered into a mule contract, though the episodes of the Waters Pierce trust action, when fraudulent action is alleged to have been taken in securing the dismissal of suits; the facts of the investigation at that time; the acts of Senator Bailey in the upper house of Congress and in Austin; the circumstances of the Tennessee railroad transaction on to the present time. It is alleged that in 1905 Senator Bailey collected a fee of $118,000 through a Bainesville Bank.

* * * * * * *

367 After covering well known allegations concerning the events at Waco, when the Waters Pierce Oil Company was permitted to reorganize and re-enter Texas, Mr. Cocke alleged that Senator Bailey prevented a close scrutiny of his record and failed, when on the stand, to tell the whole truth. An allegation is made to the effect that during 1901 Senator Bailey came to Austin as an agent for the Standard Oil Company to use his influence to the defeat of the Grinnan and Davidson anti-trust bills.

Defendant next offered in evidence the following portion of an article appearing in The Houston Chronicle, of Jan. 23, 1907, as published in the issue of said paper of said date, viz:

Bailey and the Trusts in the Sunday Chronicle.

Copies of the Chicago Examiner of Monday, containing an exposition of the relations existing between the Waters Pierce Oil Company and the Standard Oil Company and the close manner in

which Joseph W. Bailey has been identified with these monopolies have been received in Houston.

An effort was made on the part of the owner of the newsstand which received the copies to suppress them.

Defendant next offered in evidence the following portion of an article appearing in The Houston Chronicle of Nov. 28, 1906, as published in the issue of said paper of said date, viz:

368 Did Senator Bailey Take Pierce Money?

Vouchers Showing Sums Paid to Him are Alleged to be in Existence.

Demand Made on Counsel for Waters Pierce Oil Company to Produce Documents Evidencing the Payment of Several Thousand Dollars to Senator Bailey on Account of Texas Cases.

Special to The Chronicle.

Austin, Texas, Nov. 28.—The sensational stage was reached in the ouster suit against the Waters Pierce Oil Company last night when a demand was made by counsel representing the state for documents of the defendant company which it is alleged will show the payment of divers sums to Hon. J. W. Bailey, junior senator from Texas, by H. C. Pierce, on account of "the Texas cases." The documents described in the demand made for their introduction will recall in public memory utterances which Senator Bailey has recently made in Texas to the effect that he did not receive one dollar for any service he may have rendered in getting the Waters Pierce Oil Company reinstated in Texas six years ago.

Transactions showing that the Senator has been paid for services rendered to H. C. Pierce are minutely described in the demand for the production of the documents. Dates and amounts are given, and vouchers showing on what account payments were made, are alleged to be in existence. The sudden and unexpected turn given to the litigation bids fair to convulse the state politically and would seem to render necessary a renewal of Senator Bailey's campaign of explanation and vindication.

369 Money Paid to Bailey.

Attorney General Davidson and assistant counsel for the state served upon Hon. George Clark, of counsel for the Waters Pierce Oil Company, and filed with the District Clerk of Travis County, a notice demanding the production in court of various records and papers of the Waters Pierce Oil Company, showing, among other things, the original trust agreement, and agreement between the Waters Pierce Oil Company and the Eagle Refining Company for the purchase of the Texas property of the last mentioned company; also books showing copies of correspondence between counsel for the Waters Pierce Oil Company and J. W. Bailey, and various vouchers

of specified number and date purporting to show payment of money to J. W. Bailey.

Notice is given that if the original are not produced upon the trial of the case, secondary evidence will be offered by the state.

The text of the notice is as follows:

No. 24,551. The State of Texas *vs.* Waters Pierce Oil Company. Suit Pending in the Twenty-sixth Judicial District Court of Travis County, Texas.

To Messrs. Cochran and Penn or the other attorneys of record for the Waters Pierce Oil Company, defendant.—You are hereby notified to produce upon the trial of the above entitled and number cause the following contracts, agreements, documents, books letters and memoranda:

1. The original trust agreement entered into upon the 2nd day of January, A. D. 1882, and being the instrument set out in plaintiff's original petition, commencing on page 6 thereof and marked Exhibit A.

2. The supplementary agreement entered into on the 4th day of January, A. D. 1882, same being the instrument set out in plaintiff's petition, commencing on page 13 and marked Ex-
370 hibit B.

3. Agreement entered into on the 5th day of October, 1894, between the Eagle Refining Company, party of the first part, S. S. Drake, A. G. Carpenter, W. A. Smith, W. H. K. Rose, A. W. Clem, parties of the second part, and the Waters Pierce Oil Company, party of the third part, relating to the purchase by the Waters Pierce Oil Company of the assets and property of the Eagle Refining Company in Texas.

4. Memoranda of agreement dated St. Louis, Mo. Sept. 13, 1894, addressed to Mr. W. H. Rose, general manager of the Eagle Refining Company, Cleveland, O., relating to the purchase by the Waters Pierce Oil Company's plant, stock, business, etc., situated in the State of Texas, and signed by H. C. Pierce, president, and William H. K. Rose.

5. Resolutions adopted at a special meeting of the directors of the Eagle Refining Company, held in the City of Cleveland, O., on 1st day of October, 1894, and signed by W. A. Smith, secretary, accepting the proposition of the Waters Pierce Oil Company of Missouri for the purchase of the branch of the Eagle Refining Company at Dallas, Texas, and other points in said proposition.

6. Memoranda of agreement made and entered into on the 5th day of October, 1894, between the Waters Pierce Oil Company and A. W. Clem of the State of Texas, relating to the employment of said Clem as manager of the Waters Pierce Oil Company, signed by the Waters Pierce Oil Company, and H. C. Pierce, President, and A. W. Clem.

7. All contracts and agreements entered into between the Waters Pierce Oil Company and the Texas Oil and Gasoline Company, or Roy Campbell, relating to the purchase of the business and assets of said Texas Oil and Gasoline Company, or the business of said Roy Campbell, or the employment of the said Roy Campbell by
371 the Waters Pierce Oil Company as agent or manager of either of said businesses.

8. Copies of all letters addressed to A. W. Clem or the Eagle Refining Company or the Texas Oil and Gasoline Company or Roy Campbell relating to the management of the business of the Eagle Refining Company or the Texas Oil and Gasoline Company and the suppression of competition by them.

9. All letters, documents, reports, etc., received from the Eagle Refining Company or the Texas Oil and Gasoline Company or W. Clem or Roy Campbell relating to the suppression of competition by those concerned and parties in the State of Texas.

10. All maps drawings and writings outlining, marking or otherwise defining the territorial limits in which the Waters Pierce Oil Company organized in 1878, and the Waters Pierce Oil Company organized on May 29, 1900, confined their business operations.

11. All memoranda of agreement made by John D. Johnson, H. S. Priest, attorney of record for defendant, and the defendant company, with H. S. Hadley, attorney general of Missouri, while taking the testimony of H. H. Rogers of New York, wherein it was admitted for the purpose of that case only that now and during the time charged in the information a majority of the shares of stock of the Standard Oil Company of Indiana and of the Republic Oil Company was and is held for the Standard Oil Company of New Jersey, and that all of the shares of stock of the Waters Pierce Oil Company standing on its books in the name of M. M. Van Buren are held for the Standard Oil Company of New Jersey.

12. All letters books and records showing copies of all letters from J. D. Johnson to George Clark of Waco, Texas, and all letters from George Clark to J. D. Johnson of St. Louis, Mo. and all letters from J. D. Johnson to all parties in Texas, and all letters from Mr.
372 J. D. Johnson, and Mr. George Clark to J. W. Bailey, and all letters from Mr. J. D. Johnson and Mr. George Clark to parties in New York relating to the settlement of the cases pending in the city of Waco, Texas, against the old Waters Pierce Oil Company, and its officers and agents, all of said letters being written during the year 1900. Also all letters and copies of letters written by and to the above parties, as set out, relating to the re-admission of the Waters Pierce Oil Company into Texas in 1900.

13. Personal voucher of H. C. Pierce, dated April 25, 1900 for $3300, for money advanced to Joseph W. Bailey as a demand loan on account of Texas cases; also voucher record book showing entry of such voucher; also bills receivable book of defendant showing entry of the demand loan to Joseph W. Bailey on April 25, 1900, for $3300; also voucher record book showing entry of voucher No. F-462, issued June 30, 1900, by Waters Pierce Oil Company for $3300 and audited by D. W. Conroy, auditor of the Standard Oil Company of New Jersey; also cash book folio of defendant in use June 30, 1900.

. 14. Voucher record of defendant in use June 15, 1900, showing entry of voucher F-86 to Henry & Stribling of Waco, Texas, "Account of expense in anti-trust civil case of State of Texas *vs.* W. P. O. Co. at Waco," approved by J. D. Johnson; also sight draft drawn by J. W. Bailey for $1500 on Waters Pierce Oil Company for said

amount, paid to Henry & Stribling; also cash book in use as that time containing folio 117, showing a record of said transaction.

15. Voucher record of defendant in use November 23, 1900, showing entry of voucher No. L-130, dated November 23, 1900, for $200, paid to J. W. Bailey "account of Texas cases." Also cash book in use November 23, 1900, containing folio No. 110 showing record of above transaction.

373 16. Voucher record of defendant in use November 20, 1900, showing entry voucher No. L-92 and also H. C. Pierce's personal voucher, dated November 20, 1900, for $3100, advanced to J. D. Johnson, and paid out by him to connection with "Waco, Texas, penalty suits." Also cash book in use at that date containing folio 7, showing a record of said transaction.

17. Check of H. C. Pierce, dated March 28, 1901 for $1750 sent to J. W. Bailey in response to a letter from J. W. Bailey to H. C. Pierce of that date requesting New York exchange for that amount. Also voucher record of defendant in use on June 12, 1901, showing entry of voucher No. F-41 for $1750 paid by defendant to J. W. Bailey "for legal expense account Texas matters."

Also draft of Fourth National Bank of St. Louis, No. 561890, on Chatham National Bank of New York, transmitting to J. W. Bailey $1750. Also cash book in use March 28, 1901, containing folio 223, showing a record of said transaction.

18. Voucher record of defendant in use March 6, 1901, showing entry of voucher No. C-12, audited by C. W. Norman, auditor, of the Standard Oil Company of New Jersey, for $8000 for "amount of loan to J. W. B. as per note in hands of treasurer." Also bills receivable book of defendant in use at that time showing entry of said note. Also cash book in use at that date containing folio 119, showing entry of said transaction. Also check of defendant No. 44430 for $8000.

In event of your failure to produce the above books, records, documents, writings, cash books, checks and memorandas as called for above, the plaintiff *was* introduce secondary evidence to prove the contents thereof.

R. V. DAVIDSON,
Attorney General.

374 JEWEL P. LIGHTFOOT,
Assistant Attorney General.
JOHN W. BRADY,
County Attorney of Travis County.
GREGORY & BATTS,
Attorney for Plaintiff.

I hereby certify that I served a true and correct copy of the within notice upon defendant by delivering a true copy of same in person to Hon. George Clarke, attorney of record of defendant, at 7:05 P. M. on this the 27th day of November, 1906.

JEWEL P. LIGHTFOOT,
Attorney for Plaintiff.

Defendant next offered in evidence the following portion of an article appearing in The Houston Chronicle of Dec. 3, 1906, as published in the issue of said paper of said date, viz:—

Maybe H. C. Pierce is as great an expert in juggling records as he proved himself to be in manipulating an affidavit.

375 Defendant next offered in evidence the following portion of an article appearing in The Houston Chronicle of Sept. 17, 1906, as published in the issue of said paper of said date, viz:

Texas May Proceed Against Mr. Pierce.

Magnate's Sworn Testimony and Texas Affidavit Wholly at Variance.

Evidence in Missouri's Ouster Proceedings Admitted that Standard Oil Held 3,000 Shares Waters Pierce Stock when Company was Re-admitted to Texas—Contradicts Previous Affidavit.

Special to The Chronicle.

Austin, Texas, Sept. 17.—Considerable interest is being manifested in state official circles here in the ouster proceeding now being conducted by the State of Missouri against the Waters Pierce Oil Company and the Standard Oil Company before Commissioner Anthony in St. Louis. Special interest is attached to the testimony adduced by Henry Clay Pierce, president of the Waters Pierce Oil Company, as it disclosed that at the time the company was readmitted into the State, in 1900, the Standard Oil Company was the owner of over 3000 shares of the stock. In the face of this disclosure Mr. Pierce made a sworn affidavit to the State of Texas that none of the stock of the Waters Pierce Oil Company was owned by any trust whatever.

The testimony of Mr. Pierce has shown beyond a doubt that it is at variance with his sworn affidavit made in Texas in 1900.

This lays Mr. Pierce liable to the Texas authorities if his company was readmitted into the state under false pretenses. When
376 seen about this matter the attorney general refused to express himself as to what the department will do looking toward the institution of criminal proceedings against President Pierce. The matter, however, would have to be brought to the attention of the Travis County Grand Jury before the state could do anything, and the attorney general has not indicated what he will do in the premises.

The affidavit upon which the Waters Pierce Oil Company was readmitted into the state in 1900 was a stringent one, and its text is as follows:

(Here followed copy of affidavit set out in plaintiff's petition and alleged to have been made by H. C. Pierce, on May 31st, 1900.)

Defendant next offered in evidence the following portion of an article appearing in The Houston Chronicle of Dec. 1, 1906, as published in the issue of said paper of said date, viz:

The Bailey Chickens Come Home to Roost.

Attorney General Gives the Senator a Large Dose of His Own Medicine.

Record is Cited to Show that Bailey Did Receive Money from Pierce on Account of the Texas Cases.—Authenticity of the Senator's Denials is Flatly Challenged.

Special to The Chronicle.

Austin, Texas, Dec. 1.—After months and years of evasion, avoidance, denunciations, sophistry and subterfuge, it appears that the Honorable Joseph Weldon Bailey, junior United States sen-
377 ator from Texas, president of the American Trotting Horse Breeders' Association, owner of the Grapevine Ranch promotor of fine Kentucky horse flesh, and in off years corporation counsel for railroad and oil companies at last apparently finds himself cornered.

Unless all signs fail he is 'twixt the devil and the deep blue sea—the oil octopus and the azure of political oblivion.

After denouncing men as infamous liars who reiterated well authenticated and undisputed charges against him the senator is now called upon to dodge the boomerang effect of his own epithets which find application to himself in this that he has publicly denied the existence of facts which have now been disclosed by public documents.

The poultry is now making a return trip.

From the time of the legislative investigation of six years and more ago down to yesterday the senator has denied in sworn testimony and in public speeches and writings that he received any compensation from H. Clay Pierce or the oil company of which Pierce is the head for any services rendered in connection with the civil proceedings against the oil company or the criminal proceedings against Pierce. These denials are shown by records cited by the attorney general of Texas, to be either fabrications or subterfuges. Thus the man who six months ago solemnly challenged the veracity of the President of the United States and who has since that time used the word liar promiscously is called upon to swallow some of his own medicine.

There ought to be efficacy in the remedy for the senator has been given a large dose. His case is a chronic one, with long existing complications. A malady of six years' duration must needs require a remedy of heroic proportions. Such a remedy is administered in a letter which Attorney General Davidson has addressed to Sen-
378 ator Bailey. This letter is in reply to the statement which Senator Bailey gave out from Washington in which he charged a political conspiracy against him, talked wildly about forged documents and threatened prosecution for perjury and goodness knows what besides. The letter from the attorney general is *cl*aculated to knock a hunk of placidity out of the senator's bump of serenity, and is as follows:

Davidson to Bailey.

AUSTIN, TEXAS, *Nov.* 30, 1906.

Hon. J. W. Bailey, Washington, D. C.

DEAR SIR: For more than six years the people of Texas have lived under the shadow of the wrong perpetrated against them by the reintroduction of the Waters Pierce Oil Company into Texas under your guidance and direction after it had been outlawed by the highest courts of the land. During all of this period of time it has plundered the people without conscience and the obligation which I, as attorney general owed to them, prompted me to exhaust every effort to purge this state of an institution which should never have been permitted to re-enter.

In developing the testimony necessary to convict that corporation of continued violations of our laws, I have proceeded with an eye single to that purpase. That our investigations have developed the fact that you have not been candid with the people in stating your connection with its reintroduction has only filled me with shame and sadness.

Even under the great provocation of having unworthy motives ascribed to me, my assistants and associates, I have had no feeling other than that of sorrow, that one to whom has been entrusted the high position of United States senator should resort to abuse and vilification in an effort to silence the righteous indignation of our people.

379 In my anxiety to escape a controversy that might have injuriously affected the interests of the state in the case of the Waters Pierce Oil Company, I have refrained from denying your mis-statement, to the effect that you had tendered your services to the state in that case.

If the attack made by you on me through the papers of this date were purely personal, I might still refrain, but when you charge that the officers of the State have entered into a conspiracy to do injury to a citizen I owe it to the people who elected me to an honorable position to answer.

I have filed a petition wherein it is charged that H. C. Pierce, acting for the Waters Pierce Oil Company before and after its reorganization paid out money in connection with the cases pending against the old company, thereby assuming obligations of the old corporation and that such sums so paid were audited and approved by the auditors of the Standard Oil Company of New Jersey. The allegations have been sustained by the district judge as proper: They would not have been made if the facts had not been regarded as pertinent nor would they have been if I had not been in position to prove them.

The circumstance that the evidence established that you received some of the money which the company charged to expenses and connected with the Texas anti-trust cases is a fact for which I am in no sense responsible; and my idea of the discharge of public duties does not comport with the suppression of evidence because such evidence might injure one in high position.

That you may have an opportunity of explaining the facts suggested by the notice filed by us in the discharge of official duty, I make the following statements and ask the following questions:

April 25, 1900, you received from H. C. Pierce $3300.

This sum was subsequently returned to H. C. Pierce by the
380 Waters Pierce Oil Company and charged as "account of Texas cases." Was the sum given to you as a loan or as a fee? If a loan, has it ever been paid? If a fee, for what service?

On June 15, 1900, a charge was made in the books of the Waters Pierce Oil Company of $1500 paid to Henry & Stribling "on account of expenses of anti-trust civil case." Was not this sum paid by a sight draft drawn by you? You have stated that you did not draw on the Waters Pierce Oil Company for such sum. Did you draw such a draft on H. C. Pierce or J. D. Johnson?

You received $200 on November 23, 1900, which was charged up on the books of the Waters Pierce Oil Company as "on account of the Texas cases." Did you represent the Waters Pierce Oil Company or H. C. Pierce in Texas in any case other than the anti-trust case? Was the sum paid to you by H. C. Pierce or the Waters Pierce Oil Company?

On March 28, 1901, or about that time, you wrote a letter to H. C. Pierce, in response to which you received New York exchange for $1750. This sum was charged up on the books of the Waters Pierce Oil Company as "on account of Texas legal expenses." Did you in this letter request a loan, or did you demand a fee? If a loan, has it been paid? If a fee, for what service?

On March 6, 1901, you executed your note for $8000 due in four months to H. C. Pierce. You received Pierce's check for the amount. He immediately had the amount repaid him by the Waters Pierce Oil Company. Has this note ever been paid? Has payment ever been demanded?

Yours truly, R. V. DAVIDSON.

381 Defendant next offered in evidence the following portion of an article in The Austin Statesman of Dec. 1, 1906, as published in the issue of said paper of said date, viz:—

Replies to Bailey.

Attorney General Davidson Gives Out Open Letter to Senator.

Asks Him to Answer Certain Questions.

Declares He has Learned Facts While Making Official Investigation that Fill Him With Sadness.

Attorney General R. V. Davidson last night gave out the following open letter written by him to Joseph W. Bailey in reply to a statement given out by Mr. Bailey in Washington Thursday night, a special report of which was published in The Statesman yesterday morning:

AUSTIN, TEXAS, *November* 30, 1906.

Hon. J. W. Bailey, Washington, D. C.

DEAR SIR: For more than six years the people of Texas have lived under the shadow of the wrong perpetrated against them by the reintroduction of the Waters Pierce Oil Company into Texas under your guidance and direction after it had been outlawed by the highest courts of the land. During all of this period of time it has plundered the people without conscience and the obligation which I, as attorney general owed to them, prompted me to exhaust every effort to purge this state of an institution which should never have been permitted to re-enter.

382 In developing the testimony necessary to convict that corporation of continued violations of our laws, I have proceeded with an eye single to that purpose. That our investigations have developed the fact that you have not been candid with the people in stating your connection with its reintroduction has only filled me with shame and sadness.

Even under the great provocation of having unworthy motives ascribed to me, my assistants and associates, I have had no feeling other than that of sorrow, that one to whom has been entrusted the high position of United States senator should resort to abuse and vilification in an effort to silence the righteous indignation of our people.

In my anxiety to escape a controversy that might have injuriously affected the interests of the state in the case of the Waters Pierce Oil Company, I have refrained from denying your mis-statement, to the effect that you had tendered your services to the state in that case.

If the attack made by you on me through the papers of this date were purely personal, I might still refrain, but when you charge that the officers of the State have entered into a conspiracy to do injury to a citizen I owe it to the people who elected me to an honorable position to answer.

I have filed a petition wherein it is charged that H. C. Pierce, acting for the Waters Pierce Oil Company before and after its reorganization, paid out money in connection with the cases pending against the old company, thereby, assuming obligations of the old corporation and that such sums so paid were audited and approved by the auditors of the Standard Oil Company of New Jersey. The allegations have been sustained by the district judge as proper. They would not have been made if the facts had not been regarded as pertinent nor would they have been if I had not been in a position to prove them.

383 The circumstance that the evidence established that you received some of the money which the company charged to expenses connected with the Texas anti-trust cases is a fact for which I am in no sense responsible; and my idea of the discharge of public duties does not comport with the suppression of evidence because such evidence might injure one in high position.

That you may have an opportunity of explaining the facts sug-

gested by the notice filed by us in the discharge of official duty, I make the following statements and ask the following questions:

April 25, 1900, you received from H. C. Pierce $3300.

This sum was subsequently returned to H. C. Pierce by the Waters Pierce Oil Company and charged as "account of Texas cases." Was the sum given to you as a loan or as a fee? If a loan, has it ever been paid? If a fee, for what service?

On June 15, 1900, a charge was made in the books of the Waters Pierce Oil Company of $1500 paid to Henry & Stribling "on account of expenses of anti-trust civil case." Was not this sum paid by a sight draft drawn by you? You have stated that you did not draw on the Waters Pierce Oil Company for such sum. Did you draw such a draft on H. C. Pierce or J. D. Johnson?

You received $200 on November 23, 1900, which was charged up on the books of the Waters Pierce Oil Company as "on account of the Texas cases." Did you represent the Waters Pierce Oil Company or H. C. Pierce in Texas in any case other than the anti-trust case? Was the sum paid to you by H. C. Pierce or the Waters Pierce Oil Company?

On March 28, 1901, or about that time, you wrote a letter to H. C. Pierce, in response to which you received New York exchange for $1750. This sum was charged up on the books of the Waters Pierce Oil Company as "on account of Texas legal expenses." Did
384 you in this letter request a loan, or did you demand a fee? If a loan, has it been paid? If a fee, for what service?

On March 6, 1901, you executed your note for $8000 due in four months to H. C. Pierce. You received Pierce's check for the amount. He immediately had the amount repaid him by the Waters Pierce Oil Company. Has this note ever been paid? Has payment ever been demanded?

Yours truly,

R. V. DAVIDSON,
Attorney General.

Defendant next offered in evidence the following portion of an article appearing in The Austin Statesman of Oct. 9, 1906, as published in the issue of said paper of said date, viz:—

Correspondence is Made Public.

Senator Bailey Offered to Testify in Waters-Pierce Case.

OCTOBER 6, 1906.

Hon. J. W. Bailey, United States Senator, Gainesville, Texas.

SIR: In answer to your letter of October 3, you are advised that the suit against the Waters-Pierce Oil Company was instituted without reference to any political effect, or without consideration of its consequences upon any person in this State; it was filed for the sole purpose of vindicating an outraged law and punishing a palpable fraud.

385 We have been engaged for months in collecting the necessary testimony upon which to base this action, and the suit was filed as soon as we had sufficient evidence in legal form.

You failed to point out the particular allegations in the petition to which you except. Had you done so I would have probably been in a position to point out its materiality.

I expect to prove every allegation made, and, in my judgment, each and every one is material and relevant to the case which the state expects to present to the Court.

I specifically deny that any allegation was made having in view any political consequence, or to aid a movement of any character.

The question of tendering your services to the state to aid in the prosecution, is one which you must settle according to your own inclinations. If you entertained such a purpose it was never communicated to me, although you had frequent opportunity to do so; and the grounds upon which you predicate your action in refraining from so doing, are based upon a construction for which you alone must accept the responsibility.

As stated, the sole purpose of this suit is to drive from the borders of this state a foreign corporation which has for twenty-five years preyed upon the people, and consumed their substance, which corporation when outlawed by a judgment of the highest court of the land was re-admitted into the state by a fraud, which for premeditated audacity and utter contempt of law has never before, nor since, been equalled in the history of this country. I have resisted every effort made to draw this case into politics as the interest of the state is paramount to the political fortunes of any person. Therefore, I trust that it will not become necessary for me to take any part in this agitation.

Referring to your proposal to testify in the case, concern-
386 ing the representation which the defendant made to you claiming its independence of all trust relations, I beg to advise that if your testimony should be limited to that issue I do not believe that it will be of any material value to the state's case, as I understand that defendant will not deny that it claimed to be independent.

Very respectfully,

(Signed) R. V. DAVIDSON,
Attorney General.

Defendant next introduced in evidence letter of date October 6, 1906, from R. V. Davidson, Attorney General, to Honorable J. W. Bailey, which appeared in The Austin Daily Tribune of date Tuesday October 9, 1906, and is as follows:

"AUSTIN, TEXAS, *Oct.* 6, 1906.

"Hon. J. W. Bailey, United States Senator, Gainesville, Texas.

SIR: In answer to your letter of October 3, you are advised that the suit against the Waters-Pierce Oil Company was instituted without reference to any political effect, or without consideration of its consequences upon any person in this State; it was filed for the sole purpose of vindicating an outraged law and punishing a palpable fraud.

We have been engaged for months in collection the necessary testimony upon which to base this action, and the suit was filed as soon as we had sufficient evidence in legal form.

You failed to point out the particular allegation in the petition to which — except. Had you done so I would have probably been in a position to point out its materiality.

387 I expect to prove every allegation made, and, in my judgment, each and every one is material and relevant to the case which the State expects to present to the Court.

I specifically deny that any allegation was made having in view any political consequences, or to aid a movement of any character.

The question of tendering your services to the State to aid in the prosecution is one which you must settle according to your own inclinations. If you entertain such a purpose it was never communicated to me, although you had frequent opportunity to do so; and the grounds upon which you predicate your action in refraining from so doing are based upon a construction for which you alone must accept the responsibility.

As stated, the sole purpose of this suit is to drive from the borders of this State a foreign corporation which has for twenty-five years preyed upon the people and consumed their substance, which corporation when outlawed by a judgment of the highest court of the land was readmitted into the state by a fraud, which for premeditated audacity and utter contempt of law has never before, nor since, been equaled in the history of this country.

I have resisted every effort made to draw this case into politics, as the interest of the state is paramount to the political fortunes of any person. Therefore I trust that it will not become necessary for me to take any part in this agitation.

Referring to your proposal to testify in the case concerning the representation which the defendant made to you claiming its independence of all trust relations, I beg to advise that if your testimony should be limited to that issue I do not believe that it will be of any material value to the state's case, as I understand that

388 defendant will deny that it claimed to be independent.

Very respectfully,

(Signed) R. V. DAVIDSON,
Attorney General."

Defendant next introduced in evidence letter of date November 30, 1906, from R. V. Davidson, Attorney General to Hon. J. W. Bailey, which appeared in the Austin Daily Tribune of date Sunday, December 2, 1906, and which is as follows:

"AUSTIN, TEXAS, *November* 30, 190-.

"Hon. J. W. Bailey, Washington, D. C.

DEAR SIR: For more than six years the people of Texas have lived under the shadow of the wrong perpetrated against them by the reintroduction of the Waters Pierce Oil Company into Texas under your guidance and direction after it had been outlawed by the highest courts of the land.

During all that period of time it has plundered the people without conscience, and the obligation which I, as attorney general, owed them prompted me to exhaust every effort to purge this state of an institution which should never have been permitted to re-enter.

In developing the testimony necessary to convict that corporation of continued violations of our laws, I have proceeded with an eye single to that purpose. That our investigations have developed the fact that you have not been candid with the people in stating your connection with it- reintroduction has only filled me with shame and sadness.

Even under the great provocation of having unworthy —
389 ascribed to me, my assistants and associates, I have had no feeling other than that of sorrow, that one to whom has been entrusted the high position of United States senator should resort to *to* abuse and villification in an effort to silence the righteous indignation of our people.

In my anxiety to escape a controversy that might have injuriously affected the interests of the state in the case against the Waters Pierce Oil Company, I have refrained from denying your mis-statement to the effect that you had tendered your services to the State in that case.

If the attack made by you on me through the papers of this date were purely personal I might still refrain; but when you charge that the officers of the state have entered into a conspiracy to do injury to a citizen, I owe it to the people who elected me to an honorable position to answer.

I have filed a petition wherein it is charged that H. C. Pierce, acting for the Waters Pierce Oil Company, before and after its reorganization, paid out money in connection with cases pending against the oil company, thereby assuming obligations of the old corporation and that such sums so paid were audited and approved by the auditors of the Standard Oil Company of New Jersey. The allegations have been sustained by the district judge as proper. They would not have been made if the facts had not been regarded as pertinent, nor would they have been if I had not been in position to prove them.

The circumstances that the evidence establishes that you received some of the money which the company charged to expenses connected with the Texas anti-trust cases is a fact for which I am in no sense responsible, and my idea of the discharge of public duty does not comport with the suppression of evidence because such evidence might injure one in high position.

390 That you may have an opportunity of explaining the facts suggested by the notice filed by us in the discharge of official duty, I make the following statements and ask the following questions:

April 25, 1900, you received from H. C. Pierce $3,300. This sum was *was* subsequently returned to H. C. Pierce by the Waters Pierce Oil Company and charged as "account of Texas cases." Was the sum given to you as a loan or as a fee? If a loan, has it ever been paid? If a fee, for what service?

On June 15, 1900, a charge was made in the books of the Waters Pierce Oil Company of $1,500 as paid to Henry & Stribling, "on account of expense of anti-trust civil case." Was not this sum paid by a sight draft drawn by you? You have stated that you did not draw for such sums. Did you draw such a draft on H. C. Pierce or J. D. Johnson?

You received $200 on November 23, 1900, which was charged upon the books of the Waters Pierce Oil Company as on "account of Texas cases." Did you represent the Waters Pierce Oil Company or H. C. Pierce in Texas in any case other than the anti-trust case? Was the sum paid to you by H. C. Pierce or the Waters Pierce Oil Company?

On March 28, 1901, or about that time, you wrote a letter to H. C. Pierce in response to which you received New York Exchange for $1,750. This sum was charged on the books of the Waters Pierce Oil Company as on "account of Texas legal expenses." Did you in this letter request a loan, or did you demand a fee? If a loan, has it been paid? If a fee, for what service.

On March 6, 1901, you executed your note for $8,000, due in four months to H. C. Pierce. You received Pierce's check for the amount. He immediately had the amount repaid him by the Waters Pierce Oil Company. Has this note ever been paid? Has pay-
391 ment ever been demanded?

Yours truly,

R. V. DAVIDSON,
Attorney General."

Defendant next introduced in evidence an editorial from the Austin Daily Tribune of date Friday, September 21, 1906, which is as follows:

"Waters-Pierce Suit.

"As foreshadowed in The Tribune, the expected has happened and the state has instituted suit against the Waters-Pierce Oil Company to oust it from the State and to recover penalties aggregating $5,228,400.

Attorney General Davidson has been busy for several months getting up evidence against the company and the testimony of Mr. Pierce in St. Louis last week, damaging as it was, had nothing whatever to do with the action of Attorney General Davidson and County Attorney Brady.

They had secured all of the evidence necessary before Pierce made his statement. His evidence only corroborated that which the State had obtained from various sources.

This case will be of special interest to Texans, as the trial is expected to put Senator Bailey under the brilliant blaze of the searchlight.

For several years Senator Bailey had been suspected of being in the very close confidence of the oil trust and its very able servant and defender, and recent developments tend to show that the suspicion has been fully confirmed.

Progress of the case just filed will be watched with interest."

392 Defendant next introduced in evidence the headlines of an article, and a portion of the article signed by "H. F. Ring, President of the Harris County Good Government Club," dated Houston, Texas, Sept. 16, 1906, and appearing in The Austin Daily Tribune of date Sunday Morning, September 23, 1906, the headlines to the article and the portion of the article offered in evidence being as follows:

Senator Bailey Under the Limelight.

"Shame of Texas" Is Now the Slogan.

Joseph W. Bailey, by His Own Admission "Is a Traitor Senator" to the People.

Does Not Mince Matters.

Good Government Club of Houston Starts the Watch-Fires in a Hot Campaign.

Address to the People.

* * * * * * *

"For twenty years or more the Waters Pierce Oil Company has operated in Texas, unopposed by the Standard, and time and again it had, by nefarious practices, crushed out all attempts to compete with it. The Standard Oil Company has never been known to fail to wage relentless war on every real competitor. Yet the bare assurance of some one was enough to satisfy Mr. Bailey that he was "interceding" for "an independent concern." That "assurance" prevented this green and innocent one from knowing that he was being used as a tool by the Standard Oil Company; from knowing what ever- intelligent merchant and farmer in Texas,
393 knew, namely: That the Waters Pierce Oil Company was controlled by the Standard Oil. And now, since this well known fact has been recently established in a judicial proceeding brought by the attorney general of Missouri, we understand that Mr. Bailey is about to make some kind of grandstand play for the purpose of fooling his constituents into the belief that in 1900 he was innocently imposed upon by the representatives of the Standard Oil Company. Will they be fooled?"

The defendant next introduced in evidence the following article, and the headlines to the article, as same appeared in the Austin Daily Tribune, of date Thursday, November 22, 1906, viz:

"Grand July Indicted H. C. Pierce for Perjury.

The Oily Fox Ensconced in Fastnesses of Empire State to Prevent His Extradition from Missouri.

"That H. C. Pierce recently slipped out of Missouri and went over to the State of New York is taken here to mean that he is ap-

prised of the indictment against him by the Austin Grand Jury for false swearing in his statement to the Court concerning the relations existing between the Standard Oil and Waters Pierce.

It has been rumored here for some days that the Grand Jury of the District court had returned a true bill of indictment against H. Clay Pierce of St. Louis, President of the Waters Pierce Oil Company, and such an indictment has been looked for for a long time. The report was practically confirmed here yesterday although none of the officials connected with the court would make the open
394 statement that such is the case. It is stated, however, that Mr. Pierce knew whether he had been indicted or not, and the further fact was announced that immediately after the report of the alleged indictment became current Mr. Pierce left the State of Missouri and he is now said to be in New York. He also had some of his Texas attorneys come to St. Louis and confer with himself and attorneys in that city in regard to the proposed criminal prosecution here.

The charge against Mr. Pierce contained in the indictment is false swearing. The particular offense is that the affidavit which he made to the Secretary of State of Texas in 1900 at the time the Waters Pierce Company was re-admitted to do business in the state, was false in that it stated that none of the stock of that company was owned or controlled by the Standard Oil Company.

Although the offense of perjury is debarred by limitation at the expiration of three years, it is stated that this limitation runs for only the time that the accused is in Texas. As Mr. Pierce has been out of Texas for most of the time since the alleged offense was committed he is alleged to be still amenable to the law."

The defendant next introduced in evidence the headlines to, and a portion of, an article appearing in the Austin Daily Tribune of date Monday, November 26, 1906, as follows:

395 "Objections Overruled in Waters-Pierce Suit.

Victory Is Now in Sight for Texas Against Oil Trust.

State Asks Time to Amend Petition.

"In the case of the State of Texas against the Waters-Pierce Oil Company this morning Judge Brooks sustained several exceptions from the approximate number of 145 raised by the defendant to the State's petition * * * * * *"

The defendant next introduced in evidence the headlines to, and portions of, an article in the Austin Daily Tribune of date Wednesday, November 28, 1906, as follows:

"State Springs Sensation.

Wants to Know About Bailey's Connection With Re-Admission of Oil Trust.

Books and Vouchers Are in Great Demand.

Which the State Alleges Will Show That the Senator Was Paid Some Fourteen Thousand Dollars.

"The name of Joseph W. Bailey, United States Senator, was brought into the Waters Pierce suit as having received remuneration from the concern for services rendered and loans, it is alleged by the State. The Senator may have an opportunity to explain.

396 "A new sensation was sprung by the State in the Waters Pierce Oil controversy when they brought into the case last evening alleged facts concerning the connection of Senator Joseph W. Bailey with the Waters Pierce Oil Company. They demand correspondence, vouchers, cancelled checks and other papers relating to the alleged payment of several sums of money to him for services rendered on account of demand made to him and on account of a loan of $8000 in March, 1901, for which he gave his note, so it is alleged. The state alleges that the total amount of $14,570 was paid to the Senator on account of services and as loans."

* * * * * * *

"Demand Company Records.

"Last evening at seven o'clock before District Clerk J. P. Hart, the state filed a demand of the Waters Pierce Oil Company of records of transactions of the concern. The papers demanded follow:

No. 24,551.—The State of Texas *vs.* Waters Pierce Oil Company, suit Pending in the Twenty-sixth District Court of Travis County, Texas. To Messrs. Cochran & Penn, attorneys of record for the Waters Pierce Oil Company, defendant:

"You are hereby notified to produce upon the trial of the above entitled and numbered cause the following contracts, agreements, documents, records, books letters and memoranda:

The original trust agreement entered into upon the second day of January, A. D. 1882, and being the instrument set out in plaintiff's original petition commencing on page 6 thereof and marked Exhibit A.

The supplemental agreement entered into on the 4th day of January, A. D. 1882, the same being the instrument set out
397 in plaintiff's petition, commencing on page 13 and marked Exhibit B. Agreement entered into on the 5th day of October, 1894, between the Eagle Refining Company, party of the first part; S. S. Drake, A. G. Carpenter, W. A. Smith, W. H. K. Rose, A. W. Clem, parties of the second part, and the Waters Pierce Oil Company, party of the third part, relating to the purchase by the Waters Pierce Oil Company of the assets and property of the Eagle Refining Company in Texas.

Memoranda of agreement dated St. Louis, Mo., September 13, 1894, addressed to W. H. K. Rose, general manager of the Eagle Refining Company, Cleveland, Ohio, relating to the purchase by the Waters Pierce Oil Company of the Eagle Refining Company's plant, stock, business, etc., situated in the State of Texas and signed by H. C. Pierce, president, and William H. K. Rose.

Resolutions adopted at a special meeting of the directors of the Eagle Refining Company, held in the City of Cleveland, Ohio, on October 1, 1894, and signed W. A. Smith, secretary, accepting the proposition of the Waters Pierce Oil Company of Missouri, for the purchase of the branch of the Eagle Refining Company at Dallas, Texas.

Memoranda of agreement entered into October 5, 1894, between the Waters Pierce Oil Company and A. W. Clem relating to the employment of Clem as manager.

Contracts and agreements entered into between the Waters Pierce Oil Company and the Texas Oil and Gasoline Company or Roy Campbell, relating to the purchase of the business and assets of said company and the employment of Roy Campbell.

Copies of all letters addressed to A. W. Clem or Roy Clem relating to the management of those two concerns.

All maps outlining and defining the territorial limits of the Waters Pierce Oil Company.

398 Memoranda of agreement made by attorneys Johnson & Priest with attorney General Hadley of Missouri, while taking the testimony of H. H. Rogers, wherein it was admitted that now and during the time charged in the information that all shares of stock of the Waters Pierce Oil Company standing on its books in the name of M. M. Van Buren are held for the Standard Oil Company of New Jersey.

All letters, letter books and records showing copies of all letters from J. D. Johnson to George Clark of Waco and from Clark to Johnson and from Johnson to all parties in Texas and all letters from J. D. Johnson and George Clark to J. W. Bailey and all letters from Johnson and Clark to parties in New York, etc., relating to the settlement of the case at Waco against the old Waters Pierce Oil Company.

Personal vouchers of H. C. Pierce, dated April 25, 1900, for $3300, for money advanced to Joseph W. Bailey, as a demand loan on account of Texas cases; also voucher record book showing entry of such voucher; also bills receivable book of defendant showing entry of demand loan to Joseph W. Bailey on April 25, 1900, for $3300; also voucher record book showing entry of voucher No. F-462, issued June 30, 1900, by Waters Pierce Oil Company for $3300 and audited by D. W. Conrey, auditor of the Standard Oil Company of New Jersey; also cash book, folio 156, of defendant in use June 30, 1900.

Voucher record of defendant in use June 15, 1900, showing entry of voucher F-86 to Henry & Stribling of Waco, Texas, "account of expenses in anti-trust civil case of State of Texas *vs.* W. P. Oil Co. at Waco." approved by J. W. Bailey; also sight draft drawn by J. W. Bailey for $1500 on Waters Pierce Oil Company for said amount

paid Henry & Stribling; also cash book in use at that time containing folio 117, showing record of said transaction.

399 Voucher record of defendant in use November 23, 1900, showing entry of voucher No. L-130, dated November 23, 1900, for $200 paid to J. W. Bailey "account of Texas cases"; also cash book in use November 23, 1900, containing folio No. 110, showing record of above transaction.

Also similar records showing $3100 advanced to J. D. Johnson and paid out by him in connection with the Waco (Texas) penalty suits.

Check of H. C. Pierce, dated March 28, 1901, for $1750, sent to J. W. Bailey, in response to a letter from J. W. Bailey to H. C. Pierce of that date requesting New York Exchange for that amount; also draft of Fourth National Bank of St. Louis, No. 561890, on Chatam National Bank of New York, transmitting to J. W. Bailey $1750; also cash books showing this record.

Voucher records of defendant in use March, 1901, showing entry of voucher No. C-12, audited by C. W. Norman, auditor of the Standard Oil Company of New Jersey for $8000 for "amount of loan to J. W. B. as per note in hands of treasurer"; also bills receivable book of defendant in use at the time, showing entry of said note and cash book of that date showing entry of said transaction; also check of defendant No. 44430 for $8000.

In event of your failure to produce the above books, records, documents, etc., the plaintiff will introduce secondary evidence to prove the contents thereof."

Defendant next introduced in evidence the following article from the Austin Daily Tribune of date Sunday, December 9, 1906:

"To the Waters Pierce Oil Company: Skiddoo!"

400 Defendant next introduced in evidence the headlines to, and an article, and in connection therewith a letter from R. V. Davidson, Attorney General, dated Austin, Texas, December 7, 1906, to Hon. J. W. Bailey, all of which appeared in the Austin Daily Tribune of date Sunday December 9, 1906, and which are as follows:

"Six Hundred Demand Defeat of Bailey.

Representative Travis County Democrats Emphatically Opposed to Re-election of Oil Senator.

"Signed by six hundred democrats of Travis County, a petition asking Representative Robertson to vote against Senator Bailey for the United States Senate is being circulated throughout the county. The petition is simple, asking only of Mr. Robertson that he vote against the re-election of Senator Bailey. Copies of the petition were sent to all parts of the County and the eagerness with which it was approved indicates unquestionably the sentiment of the people in Travis County.

Discussion was continued today and many are quoted as saying that they are of the opinion that the senator is up a tree. The At-

torney General placed marked emphasis in his reply to Mr. Bailey's statement. Many hot words are being exchanged between those interested in the fight.

"Senator Bailey departed Friday evening for Dallas and it is expected that he will return to Austin this evening. Just what course he will pursue or just what new sensations will be sprung it is difficult to predict, although developements of interest are expected. The documentary evidence presented by Attorney General Davidson is deemed by many incontrovertible, but the howl of forgery and perjury is being cheered by Bailey's henchmen in the city.

401 "The statement to the people of Texas was given out by Attorney General Davidson Friday night and contained many interesting disclosures. It read as follows:

"The following reply was made by Attorney General Davidson Friday night:

AUSTIN, TEXAS, *December* 7, 1906.

"Hon. J. W. Bailey, Austin, Texas.

SIR: In view of the admissions contained in your letter of yesterday in response to some of the questions set out in my letter to you of November 30, I desire to say only this:

I have never co-operated in any movement to prevent your reelection, but have confined myself to my official duties and to the preparation for trial of the case of the State of Texas *vs.* the Waters Pierce Oil Company. Some of those who are actively opposing you politically asked me to show them the evidence in my possession, but I declined to accede to the request.

But for the fact that the charge is made that I have in my possession, and am using forged documents connecting your name with the Waters Pierce Oil Company I would not make any reply to your letter.

My sense of duty to the people of this State now impels me to make public the evidence in my possession relating to that matter, and I herewith give copies of said documents to the press. The documents are not forgeries. The copies are as follows:

The Western Union Telegraph Company.

1539 Ch. Kk. No. 26. Pd.

402 LAKE NEBAGAMON, WIS., *June* 12.

Andrew M. Finlay, St. Louis.

Audited—H. H. Stein.

If Johnson approves, authorize Bailey to loan Stribling on his note $1500. Bailey should quiet all Texas parties. Tell him I will see him soon.

11:05 a. m. H. C. PIERCE.

The following notation written on telegram:

S. D. drawn by Bailey for $1500.

(*Receipt.*)

$1500.00 ST. LOUIS, MO., *June* 15, 1900.

Received of Waters-Pierce Oil Company, fifteen hundred dollars, J. W. B., account Texas cases.
Voucher F86 W. P. O. Co.
Audited—H. H. Steain.
(Signed) H. C. PIERCE.

No. 3.

(*Voucher.*)

ST. LOUIS, MO., *Nov.* 23, 1900.

Waters-Pierce Oil Company to H. C. Pierce, Dr.

Amount paid J. W. Bailey account Texas cases..... $200.00

Approved for payment—J. P. Gruet, Secretary.
Audited—W. H. Glancy.
Entered—V. R. W. H. Glancy.
Received November 23, 1900, from Waters Pierce Oil Company two hundred dollars in full payment of above account.
H. C. PIERCE.

403 No. 4.

(*Note.*)

$8,000.00. WASHINGTON, D. C., *March* 1, 1901.

Four months after date I promise to pay to the order of H. C. Pierce Eight Thousand Dollars at his office in St. Louis, Mo., for value received.

J. W. BAILEY.

No. —. Due July 14, 1901.

To the above note were attached the following letter and voucher:

The Waldorf-Astoria, Fifth Avenue, Thirty-third and Thirty-Fourth Streets and Astor Court.

NEW YORK, *March* 4, 1901.

J. P. Gruet, Esq., Sec'y.

DEAR SIR: Take this note into bills receivable and deposit company's O'K' for like amount to my credit with Fourth National Bank, as I have given B— my check.

Yours truly, H. C. PIERCE.

(*Notation on Letter.*)

Check No. 44430, $8,000 deposited in Fourth National Bank to cridit of H. C. Pierce.
Cash voucher No. C12, March 6, 1901.

(*Voucher.*)

ST. LOUIS, Mo., *March* 6, 1901.

Waters Pierce Oil Company, to H. C. Pierce, Dr.

For amount of loan to J. W. B. as per note in hands of treasurer $8,000.00

Entered—E. H. Avery.

Approved for payment—J. P. Gruet, Secretary.

404 Received, St. Louis, March 6, 1901, from Waters-Pierce Oil Company Eight Thousand Dollars, $8,000.00 in full payment of above account.

H. C. PIERCE.

By J. P. GRUET, *Secretary.*

Audited—C. W. N.

(*Voucher.*)

ST. LOUIS, Mo., *June* 30, 1900.

Waters-Pierce Oil Company, to H. C. Pierce, Dr.

APRIL 25:

To demand loan to Joseph W. Bailey, see Mr. Pierce's personal voucher of April 25..... $3,300.00

Account Texas cases.

Audited—H. Naudant.

Entered V. R.—J. P. G., Jr.

Approved for payment—J. P. Gruet, Secretary.

Received July 18, 1900, from Waters-Pierce Oil Company, thirty three hundred Dollars ($3,300.00) in full payment of above account.

H. C. PIERCE.

The following endorsements on the back of the above voucher: Voucher No. F462. Waters-Pierce Oil Company St. Louis, Mo. Amount—$3,300.00 Date—June 30, 1900. Audited—D. W. Conrey. In favor of H. C. Pierce Cash Book Folio 156 Charge to Bills Receivable. Amount, $3,300.00.

405 (*Voucher.*)

No. 2.

ST. LOUIS, Mo., *June* 15, 1900.

Waters-Pierce Oil Company, to Henry & Stribling, Waco, Drs.

Account of expense in anti-trust civil cases of State of Texas *vs.* W. P. O. Co. at Waco..... $1,500.00

O. K.—J. D. Johnson.

Draft delivered to Mr. H. C. Pierce by Mr. Gruet, November 17, 1901, H. N.

J. P. GRUET, *Secretary.*

Audited—H. Naudant.

Approved for payment—A. M. Finley, Vice President.

Received, June 15, 1900, from Waters-Pierce Oil Company, fifteen hundred dollars ($1,500.00) in full payment of above account. Draft attached.

To the above voucher were attached the following documents:

Memoranda:

Henry & Stribling, fees Waco civil cases, anti-trust, civil cases.

Audited—H. H. Stein.

(*Letter.*)

No. 5.

Lindsay House, Headquarters Post K. T. P. A. of A., D. McGraw, Proprietor.

GAINESVILLE, TEX., *March* 28, 1901.

Mr. H. C. Pierce, St. Louis, Mo.

MY DEAR PIERCE: Send me New York exchange for $1,750. Have it made payable to my order, so that it will not be
406 necessary for you to endorse it. Send it at once, as I ought to have had it several days.

Your friend, J. W. BAILEY.

Audited—W. J. Higgs.

(*Letter.*)

Waters-Pierce Oil Company.

Henry Clay Pierce.

ST. LOUIS, MO., *June* 10, 1901.

Mr. J. P. Gruet, Secretary.

DEAR SIR: Please send New York exchange for $1,750 to Joseph W. Bailey, Gainesville, Texas, and charge against legal expenses on account of Texas legislation.

I send this amount personally to Mr. Bailey in response to his enclosed letter of March 28. Since then Mr. Bailey has returned the amount to me, and it is now proper for the company to make this payment.

Attach Mr. Bailey's letter to your voucher and merely enclose the draft to him without voucher. His enclosed letter will be your voucher.

Yours truly, H. C. PIERCE, *President.*

Audited—W. J. Higgs.

(*Voucher.*)

ST. LOUIS, MO., *June* 12, 1901.

Waters-Pierce Oil Company to J. W. Bailey, Gainesville, Texas.

For legal expenses, account Texas matters..... $1,750.00

As per letter J. W. B. herewith attached, dated March 28, Fourth National Bank, St. Louis, draft No. 561890 on Chatam National Bank, New York.

407 Audited—A. J. Hutchinson.
Entered V. R.—J. P. G., Jr.
Approved for Payment—J. P. Gruet, Secretary.
Received June 12, 1901, from Waters-Pierce Oil Company, seventeen hundred dollars, $1,750.00, in full payment of above account. Receipt attached.
Audited—W. J. Higgs.

Respectfully,

R. V. DAVIDSON,
Attorney General.

Defendant next offered in evidence letter from E. G. Senter, dated Dallas, Texas, Dec. 15, 1906, addressed to the Democratic Voters of the Sixth Senatorial District, and the headlines to the letter as same appeared published in the Austin Daily Tribune of date Sunday Morning, December 16, 1906, as follows, to-wit:

"Arraignment of Senator Bailey.

Senator Elect W. Senter Gives Forceful Reasons Why Bailey Should Not Return to Senate.

"Dallas, Dec. 15.—The following letter was given out here today by State Senator-elect, E. G. Senter:

DALLAS, TEXAS, *Dec.* 15, 1906.

To the Democratic Voters of the Sixth Senatorial District:

The disclosures relating to Mr. Bailey, which have been made public since the primary election create a condition without a precedent. Under similar circumstances, any conscientious
408 judge would grant a new trial in a case pending before him. There are abundant evidences of a strong public demand for a rehearing in the senatorial matter, and believing that this issue is one which should be settled by the democratic voters of the State, rather than by the members of the thirtieth Legislature, I beg to *beg to* submit to you the question whether under the changed conditions, you will now instruct me to vote for or against Mr. Bailey for United States Senator. I do not undertake to say how your will should be expressed, but beg to suggest that it can be ascertained, without serious inconvenience, through mass meetings or local primaries. Inasmuch as the time for action is short, I take the liberty of suggesting further that whatever steps you may choose to take should not be deferred later than Saturday December 29.

The claim that Mr. Bailey has a vested right to the Senatorship by reason of the action of the democratic primaries and state convention must be considered as any other claim of title. If it is proposed to stand upon technicalities, the answer is that the people's forum only acts as a cou-t of equity. If any equity is asserted the claim must come with sufficient proof of clean hands, and that is the very question at issue.

It would be a cowardly evasion of my plain duty if I did not advise you of my own convictions touching this matter.

Up to the time of the publication of the evidence in the possession of the attorney general, and the subsequent admissions of Mr. Bailey I was committed to the view that loyalty to democratic precedents required that every doubt should be resolved in his favor, and in my own mind I have labored long and earnestly to convince myself that I could, without doing violence to my own convictions, make reasonable and satisfactory explanation of the transactions
409 which have lately come under review. The result is, after mature deliberation, that I now come to make public confession of my own mental pettifoggery. All of the years of my life have been given to the advocacy of another kind of gospel. From infancy I was taught that Robert Lee's sublime abnegation and self chosen poverty set a historical standard for Southern leadership which no man had dared or would ever dare to tramble in the dust. Fortune-getting I believe to be incompatible with a zealous and faithful administration of a public trust. The fact that Mr. Bailey has risen, within the brief space of six years, from admitted poverty to affluence, while his time belonged wholly to the public is a circumstance that in the case of any official should call for full and candid explanation. Has this been vouchsafed by Mr. Bailey? Let the record speak for itself:

The public was assured that it had been put in possession of the whole truth when the subject was under investigation six years ago. Did Mr. Bailey deal candidly with the public at that time?

In his late speech-making tour through Texas to explain his connection with the Waters Pierce Oil Company, Mr. Bailey assumed to tell, with emphasis, the full history of his connection with that company. Did he then deal candidly with the public?

Has the public yet been taken into the full confidence of Mr. Bailey, and have all the transactions of the same general class as those under review been disclosed? Has the account between him and Pierce and his associates been closed, and is Mr. Bailey ready to make an exhibit of the whole to the public eye? These questions are pertinent in view of the slow and tedious processes by which all that the public knows about this matter has been revealed.

The trust is that all that he has disclosed about the matter has been in belated explanation of some fact which found its
410 way to the public over his violent protest.

A legislative investigation has been called for, but nothing it could unfold could affect the moral force of these admitted facts:

First. That Mr. Bailey undertook to act as the interceding friend of the Waters-Pierce Oil Company upon no greater evidence of its

innocence than a letter of introduction delivered to him by Pierce and written by David R. Francis, whose identity with law-defying and trust-promoting interests was at the time notorious.

Second. That concurrently with the friendly service which he rendered to the Waters-Pierce Oil Company, Mr. Bailey began to borrow large sums of money from Pierce, that these loans were increased, and that they have apparently been discharged by fees charged against Pierce and his associates for subsequent service.

Third. That the group of financiers surrounding Pierce have, since the re-entrance of the Waters Pierce Oil Company into Texas paid enormous fees to Mr. Bailey, which, in cases disclosed to the public, have been wholly out of proportion to the services rendered, measured by the customs of this state.

Fourth. That Mr. Bailey's reputation as a lawyer was as well established prior to 1900 as thereafter, but that the group of financiers whose clientage brought him wealth did not, as far as the public is advised, seek his counsel or services until after the Waters-Pierce Oil Company re-entered Texas.

It is contended that these controlling facts show nothing more than indiscretion. If that be true, the reply is that there are some kinds of indiscretion which are offenses against the public weal, and this is one of them. It is also true that the case here presented exhausts the possibilities of proofs, whatever might be the circumstances.

411 The special interests which seek to coax or to lure a public servant into their camp do not commit the folly of making vulgar propositions. The most that can ever be charged or proved against them is that they place Aladdin's lamp in the hands of the official upon whom they have designs and bid him *greatly* his lust for wealth.

If Mr. Bailey was insensible to the meaning of the extraordinary favors showered upon him by Pierce and his associates can he be safely trusted with the vast responsibilities which rest upon a representative of Texas in the nation's highest parliament? If he devined their purposes and took those benefits with the concealed design to render no reciprocal services, is he longer worthy either of their confidence or of ours?

We cannot shut our eyes to the significance of the fact that the publication of documents in the hands of the attorney general brought the reluctant admission from the general counsel of the Waters Pierce Oil Company, and also from one of the attorneys for the state in the prosecution against it that a large sum of money was paid by the company to that attorney *from* subsequent services.

It is clear from the evidence which has been published that both Pierce and the Standard Oil Company understood that these transactions with Mr. Bailey were based upon his services in behalf of the re-admission of the Waters Pierce Oil Company. The transfer of Mr. Bailey's obligation by Pierce to the Standard Oil Company and the entries made upon the records of that company declaratory of these transactions are proofs indisputable of the underlying motives by which they were both actuated. These records were made

long ago and were not intended for the eye of the public. They are against the interests of both Pierce and the Standard Oil, and it must be assumed that the- speak the truth as far as these
412 parties are concerned. It is urged that Mr. Bailey is not responsible for the transfer of his notes by Pierce to Standard Oil. Very true. But he is chargeable with notice of Pierce's understanding of the nature of the transactions between himself and Pierce. It is difficult to believe that a man of Pierce's experience could have been misled touching a matter of this sort. He was many times a millionaire and did not need to discount Mr. Bailey's notes in order to raise funds. He is not charged by any one with being such a penurious trickster as one *who* would have been who unloaded these obligations upon the Standard Oil upon false pretense, for the purpose of casting a loss upon it which might otherwise have fallen upon himself.

Texas is entitled to a weight and influence in Congress unimpaired by personal embarrassment on the part of either of its representatives. It must be apparent to every candid mind that Mr. Bailey's influence as a senator has gone. His re-election would furnish the enemies of democracy with lamentable proof of our laxity of view with respect to our own shortcomings, but it could not rehabilitate him as a National leader. The best evidence that our national standards are still unsullied is given by the fact that no man can long fill a conspicuous place in the confidence and affections of the people of this country unless he wholly eschews the hunger and thirst for wealth.

Another potent reason why I believe Mr. Bailey's course should not be endorsed is that such actions would be, in effect, a general license to public officials, the evil results of which would not be slow to manifest themselves in the public service. If Mr. Bailey can do these things and escape censure, why should others hesitate to follow his example? Can it be doubted that such a precedent would sow dragon's teeth in every community in this State?
413 Shall we permit a lower standard of conduct to a United States Senator than would be tolerated in a minor official? If a District Judge should quickly pass from poverty to wealth as the result of favors from a syndicate of financiers who had profited by his action on the bench could words express the public indignation which would be felt upon the disclosure of the transactions.

In its broadest phases—as it may affect official conduct and public sentiment in this State, and as it may shape the ideals of the young men who are coming on and must soon take up the control of public affairs—this is a moral issue. I-s disposition is of supreme importance, not only to Texas, but to the republic, because it is the first case since the beginning of the government that such transactions as have been traced to Mr. Bailey, on the part of a United States Senator, have been presented as they are presented here for approval or condemnation by a sovereign state. If upon such an issue Texas should not be found upon the side of sound and whole-

some public morals, well may the thinking Americans tremble for the future of this country.

It is a palpable evasion of the issue to declaim against those who have been instrumental in making these transactions public. The skillful lawyers always expend their indignation upon the witness who has brought his client to the bar, but the intelligent juror, understanding that the quality of the client's act must be measured by a standard that is not varied by the mechanism through which the law travels to its facts. A faithful public servant has no occasion to quarrel with those who turn the calcium upon his inner life, and their reasons are wholly irrelevant to the question whether the acts should be approved or disapproved.

414 There is a graver question here involved than Mr. Bailey's future. His conduct has placed in jeopardy the future of the democracy of the nation. He has, at the national capitol as well as in Texas, defiantly announced that he intends to continue in the course for which he is now arraigned. His re-election is sought as a vindication of his conduct. This puts him without giving full and emphatic approval to all that he has done, and in view of his attitude with respect to the matter, who can doubt that he would so construe a re-election? To give him a clear acquittance is to make a jest of every sentence touching unlawful trusts and public morals that will be written in democratic platforms in the next national campaign. It would make Texas and Bailey the fruitful theme of every Republican orator who should take the stump against Bryan in 1908, from Maine to California, and we delude ourselves if we imagine the effect would not be serious to the party. Will such an example tend to invite the confidence of thoughtful voters in doubtful states? Can the democracy of the nation point to the senate unabashed with Mr. Bailey there? This question, it should be remembered, will not be answered by personal friends and partisans, but by the millions of silent voters of the land who hold no briefs for any leader, but who in the quiet of their homes, mindful of no influence save God and country, take counsel with their own consciences.

Beyond all questions of party stands out plain and luminous the fact that we cannot approve Mr. Bailey's conduct without approving the wrong for which no penance has been done and no apology has been made. The personal affection which now seeks with all its arts and power to shield him is almost as magnificent as a mother's unquenchable love. He must be dead indeed to the richness of

415 human friendship who can witness without a throb of sympathy the enfolding kindness which it now throws around Mr. Bailey—a touching witness to the greatness which he has so recklessly sacrificed. But while this spectacle challenges our admiration, in the silence of the night, when God reigns and conscience speaks, there stands out luminously this admonition written across the face of the heavens: "For unto whoms-ever much is given, of him much shall be required."

Respectfully, E. G. SENTER."

Defendant next introduced in evidence the headlines to and a portion of an article from the Austin Daily Tribune of date Sunday, December 30, 1906, as follows:

"Travis Democrats Oppose Bailey.

Many Prominent Speakers Make Addresses at Friday Night's Meeting.

Very Much Enthusiasm.

Appeals Were Made for United Action on the Part of Every Voter in the County.

"Purity in politics prohibits public men from taking advantage of their influence for gain or retire them, was the sentiment of about sixty-five representative men of Austin and Travis County who gathered at the anti-Bailey Democrats' club headquarters Friday
416 evening and yesterday afternoon assumed a stronger opposition to Mr. Bailey's continuance as United States Senator. Much enthusiasm prevailed and each address was the occasion of intense interest. The speakers were roundly applauded. Strong statements that were convincing and vigorous appeals for united action on the part of every voter features each address, and the speakers themselves were men of prominence in the political eye.

The opposition to the Senator is growing each day and added effort on the part of those interested to place the matter under the consideration of the voters is being put forth.

Jingling the Silver.

"God forbid the time when a nomination could not be called when the nominee was found to be so unworthy," said Hon. T. S. Johnson, formerly office assistant attorney general under Attorney General T. S. Smith, and who formerly resided in Hill County.

Judge Johnson called attention to the many political occur-ences and the position of the Senator. The refusal on the part of the executive committee to place the name of Mr. Bailey on a new primary was also criticised. The numerous "loans" granted the senator Judge Johnson condemned in strong terms and without hesitation.

He stated that he was present in the committee room during the process of investigation by the Legislature of Bailey and that the senator had, before the committee, made a clean breast of it all. Judge Johnson stated that he sympathized with him at the time, but it had developed since that he was jingling $7500 of the Waters Pierce Oil money at that very time.

Was Once a Bailey Man.

In response to a question Mr. Johnson stated that at the time he believed in Mr. Bailey he was office assistant attorney
417 general under T. S. Smith. The Waters-Pierce Oil Company was re-admitted to transact business in Texas during the time Mr. Smith was attorney general.

He appealed to his audience for unity of action in the campaign and urged that a strong organization be effected in Travis County and carry it in a whirl against such an official as Mr. Bailey.

What Outburst Means.

"If Pierce didn't have Bailey ride with him in his private car, Pierce was ungrateful," said E. T. Moore, Sr., a prominent lawyer and former member of the Legislature, who was the next speaker. His address was forcible and straight to the point. He dodged no issue and treated the subject vigorously. The meaning of this instantaneous activity and outburst among the people where there had been no opposition or invitation he inquired and emphasized that the people of Texas demanded purity. To one who bartered their rights they would retire him from public life.

That Texas had been outraged, Mr. Moore pointed out, greatly to the amusement and approval of the audience. He called attention to how regardless of the fact of the banishment of the Waters Pierce Oil Company by all of the Courts, when Bailey was convinced of its injustice, he raised the ban and brought them back, at the expense of the citizens.

Did Not Vote for Bailey.

Continuing, Mr. Moore said: "I was a member of the Legislature which investigated and elected Bailey, and although he was without opposition, I knew better and I did not vote for him." He criticised the senator for the re-admission of the Waters Pierce Oil Company regardless of the fact that the Courts outlawed them. He re-
418 ferred to the loans after a mere letter of introduction."

* * * * * * * *

Defendant next introduced in evidence the following article which appeared in the Austin Daily Tribune of date Thursday, January 3, 1907:

"Why All Democrats Should Oppose Bailey.

"It is the plain duty of every democrat that loves his country on next Saturday to attend the primary and by his ballot vote against Senator J. W. Bailey, whose actions while in the Senate have been contrary to the principles of democracy and against his own people. It is the bounden duty of the good citizenship of Travis County to register its will, and that will against him, for during his incumbency he has been the paid agent of the trusts and monopolies, the enemies of the people that have constantly preyed upon the rights of the people ever since free government was established.

The people trusted him and imposed their implicit confidence in him and in the critical hour, when they needed the help most, when Texas had driven the Waters Pierce Oil Company from its borders, one of the most gigantic trusts and monopolies in the United States, what did he do. He betrayed the people, took Pierce's gold, and represented this trust, the arch enemy of the people, and by his action re-instated it in Texas, depriving the people of a great victory and turning it into a humiliating defeat. Every democrat should be diametrically opposed to him and his return to the United States senate, because of the following reasons:

419 First. He betrayed the interests of the people for Standard Oil Gold.

Second. Because he advised the Waters Pierce Oil Company how, by indirection, it could defeat the will of the law and the people of Texas.

Third. Because he violated the plain letter of the Constitution, to-wit: "Perpetuities and monopolies are contrary to the spirit and genius of free government and shall never be allowed." Under his oath he swore to uphold the constitution and vindicate the law, and at the critical point he betrayed his people, spat upon the law and put the constitution under his foot.

Fourth. He is the paid agent of H. Clay Pierce and holds a power of attorney coupled with an interest in $13,000,000 of corporate trust property in the State of Tennessee, and when this interest came up before the senate he assumed to represent the people and this corporation at the same time.

Fifth. He has undertaken to serve two masters by bowing down and worshipping the golden calf.

Sixth. He has sought by suppression and misrepresentation to keep the facts concerning his relations to the trusts of this country from the people, the very people he said at Dallas were the best people in the world.

Seventh. His evidence before the investigating committee in the Legislature and his subsequent statements are conflicting and in direct opposition to each other upon the same points. He convicts himself by his own statements and admissions.

Eighth. Because the evidence now in the possession of the Attorney General of Texas convicts him, and by reason of Bailey's admissions and confessions he stands convicted of treason beyond a reasonable doubt.

In the great fight between the Waters Pierce Oil Company
420 and the State of Texas, the people were arrayed on one side opposing this gigantic monopoly which had been preying upon them for so many years, and when the people had won and this corporation had been put out of Texas Mr. Bailey by reason of his position under oath to serve the people of his State, betrayed them, and for Standard Oil gold and went over to the Waters Pierce Oil Company and defeated all the work that had been done, and by his advice to those enemies to free government and the rights of the people, rendered ineffective the decree of our courts and put this giant freebooter and trust monopoly back in Texas.

He ran for the Senate on an anti-trust plank and what does he do? He serves the trust while in Congress and on the stump tells the people that he has always guarded their interest.

The Bailey people are fighting the primary because they know that he is guilty, and although the people have been fooled once, still you know they can not be fooled all the time. Do not let them fool you. They will tell you that Bailey is a great man. If so, what of it? So was Benedict Arnold great but by his acts he betrayed the people of this country and went over to the enemy, for which he has been by the people held in eternal execration. Bailey, might have been great but he left his people and went over to the Waters Pierce Oil Company, the enemy of the people, and he should

be held in execration by the people of Texas and driven from the senate."

421 Defendant next introduced in evidence portions of an article from the Austin Daily Tribune of date Friday, January 4, 1907, as follows:

* * * * * * *

"There was vinegar and vitriol in the addresses on both sides of the Bailey controversy which consumed several hours last evening in a joint debate participated in by Hon. A. W. Terrell, representing the opposition to Senator Bailey, and Colonel Richard M. Wynne of Fort Worth, in the Fifty-third District court room at the Court house. The room was filled to overflowing with people and standing room was at a premium. Both the antis and those supporting Senator Bailey were present and enthusiasm ran at a high rate when the speakers introduced strong points in argument of the question."

* * * * * * *

"Bailey Too Inconsistent.

"Judge Terrell declared that a poor man can now go to the United States Senate and get rich in six years. "I don't want men to get rich too quick in public office," said Judge Terrell. He spoke of Chauncey Depew, and the manner in which he became rich. Bailey doesn't explain how he got rich quick and yet people call him "Honest Joe." He spoke of H. Clay Pierce and the indictment for perjury, and said that "he should be wearing stripes for the offense." Of Bailey- request to inspect the papers, Judge Terrell said in reply that any time that he said that he didn't borrow money from Pierce the attorney general would allow him to inspect those papers.

Judge Terrell also spoke of Bailey giving the Waters Pierce Oil Company assistance in being re-admitted into Texas. He declared that Pierce didn't want lawyers, but he wanted influence. Bailey said I am not practicing influence, but just loan me $3300.

422 About Bailey's Homecoming.

Judge Terrell declared that Bailey returned to Texas to fight the Drennan Bill, which makes corporations responsible for their debts, and the McFall Bill, which can take away the permit to do business in Texas. At this time Judge Terrell said that Senator Bailey wrote a letter to Pierce and said:

"My Dear Pierce—Send me $1750 New York exchange so it won't be necessary for me to indorse it. Send it at once for I should have had it several days ago."

The voucher was marked "account legislation," which bears out the judge's statement.

This was in April, continued Judge Terrell, about the 9th and the Senate had reported the bills favorably, and it was sent back to the House where it was defeated. "It was assas-inated by the influence of a United States Senator," he added.

This was the most convincing point of argument in Judge Terrell's address, in which he showed by facts that Bailey came back to Texas to lobby for the Waters Pierce Oil Company.

There is Wool in His Teeth.

Judge Terrell called attention to the cartoon in Collier's Weekly, which he contended shows that the impartial press, who had no interest in the outcome of the controversy, had condemned Bailey for his actions. Judge Terrell then gave his reasons and objections to always voting for the party nominee, and said that if he found a man unworthy he would see him in a mighty warm place before he would vote for him. "I don't wear an inscription under my collar, some great man's dog," he said."

He gave as an illustration a story of a dog that he once owned who was accused by his neighbor of having killed a sheep,
423 the tracks of the dog having been traced up to the home of Mr. Terrell. In addition to the evidence of the tracks of the dog, his teeth were found to be full of wool. The neighbor said, "Suspicion barks at his heels, Judge, and there is wool in his teeth, he must be shot for he is guilty." Continuing Judge Terrell said: "Suspicion barks at the heels of Joseph Weldon Bailey and there is wool in his teeth."

Judge Terrell was given at great ovation at the conclusion of his address."

The defendant next introduced in evidence the headlines to and portions of, an article appearing in the Austin Daily Tribune of date Sunday Morning, January 6, 1907, as follows:

"Sterling Democracy of Travis County Repudiates Senator Bailey.

Majority of Voters Declare Themselves Unalterably Opposed to His Return to Senate.

"The democracy of Travis County, or at least that portion of it which places the issues above the man, and demands clean, unassailed and unimpeachable records at the hands of its public servants, spoke in no uncertain terms yesterday, declaring its unalterable opposition to the return of Joseph Weldon Bailey to the United States senate.

By a vote of 1042 against 946 for the return of the Senator, the result of the primaries was known at an early hour last night, and while sixteen boxes were still unheard from at a late hour, it was generally conceded that the final returns would affect the result but little.

Brief in the time allowed for activity, but bitter in its
424 intensity and fiercely waged by opposing factions from start to finish, the whirlwind campaign was in many respects one of the most remarkable in the political history of Travis County. There was no celebration of victory last night, for it was a victory tinged with sadness that one so long beloved and idolized by his people should be branded as recreant to the high trust imposed in him.

But the voice of true democracy has spoken—"No man can serve two masters; either he will forsake the one and cleave to the other, or else he will love the one and despise the other."

* * * * * * *

"Triumph for the People.

"This election is a triumph for the people," declared J. Gregg Hill, chairman of the executive committee of Travis County anti-Bailey Club, "and shows very plainly that the people of this county do not endorse Bailey's connection with the Waters Pierce Oil Company." Mr. Hill expressed satisfaction at the results, which he said last night did not come as a surprise."

* * * * * * *

"Down with rascality, the honest vote has won," declared Judge A. W. Terrell, when advised over the telephone. The learned Judge stated that he wished to congratulate the committee on the work done."

* * * * * * *

425 " Victory Over Slush Fund.

" The fight is over in Travis County. It was one of the people against Waters Pierce and Standard Oil.

It was very plain these big oil companies were spending money. There is no denying the fact that some of the slush fund was being furnished by Waters Pierce. Men drawing big salaries from the Waters Pierce Company could be seen driving from one voting place to another, and boosters could be seen and were working with money to get votes for Bailey.

The people voting against Bailey yesterday did so knowing that they were slapping the oil trust and its hired attorney, Joseph W. Bailey.

It is a victory over slush funds and corporate power headed by Joseph W. Bailey, who not content with making two speeches in Austin and one in Manor, in which he denounced the good name of those who have the manhood to oppose his self confessed grafting, but had imported into this County his henchmen to work at the polls to change the voters.

People Congratulated on Their Victory.

While the fight was among democrats, one side was fighting for the principles of true democracy, while on the other side headed by Joseph W. Bailey and his henchmen, the fight was for the success of machine politics with no argument to stand upon but that that Joseph W. Bailey is the nominee." .

Defendant next introduced in evidence the headlines to, and a portion of an editorial appearing in the Austin Daily Tribune of date Wednesday, January 9, 1907, as follows:

426 "The Legislature's Paramount Duty."

* * * * * * *

"Criticism has at time- grown violent. Attorney General Davidson has been designated as a hydra-headed monster, who, through the influence and machinations of sore-headed and conscienceless politicians, has made allegations which he will not be able to sustain at the critical moment. Prominent partisan newspapers of the State have striven to detract from his efforts to prosecute the Waters Pierce Oil Company, and have asserted that the suit against this blood-sucking corporation was inspired solely through a base desire to defeat Senator Bailey for re-election."

* * * * * * *

Defendant next introduced in evidence the headlines to, and portions of, an articles appearing in the Austin Daily Tribune of date Thursday, January 17, 1907, the portions introduced being as follows:

" Written in Scarlet.

" Written in Scarlet!

" By the shades of the white hosts of democracy marching on before, and the sainted memories of the immortal Houston and the peerless Reagan!

Has it chanced in this day of insiduous corruption that one in whom the people imposed the highest trust and confidence should brand the brow of Texas for all time with the crimson scar of Shame?

427 " Written in Scarlet!

Ay, and in bold, clear unmistakable chirography, opposite the word " republish " in the telegraph-code book of the Waters Pierce and Standard Oil Company, both in one, the name of J. W. Bailey, United States Senator for a state which never before in its history has known a blur on its escutcheon.

Such was the evidence given the House of Representatives yesterday by Attorney General Davidson in substantiation of certain charges which have been hitherto declared false and backed by a purpose blacker than hell itself." * * *

"* * * Why should the name of a senator from Texas be included in the secret code of such a thousand-tentacled, million eyed octopus as the Waters-Pierce-Standard Oil Company, if not for the sole reason that he was a party to certain transactions of such a nature that they could ill afford to bear the fierce white light of public inspection?"

* * * * * * *

Defendant next introduced portions of the charges filed before the Legislative Investigating Committee by William A. Cocke, against Joseph W. Bailey charging Bailey's connection with certain transactions with the Waters Pierce Oil Company, as such charges appeared printed in the Austin Daily Tribune of date Sunday, January 20, 1907, and the headlines in said paper preceding said charges, the portions introduced being as follows:

428 "Specific Charges Filed by Representative Cocke.

"Alleges That Bailey Received Additional Sum of Hundred Thousand Dollars from Waters-Pierce Oil Company of Missouri.

"Representative William A. Cocke of Bexar County last night filed the following specific charges against Joseph W. Bailey in connection with certain alleged transactions with the Waters Pierce Oil Company:

"STATE OF TEXAS, *County of Travis:*

Investigation in re J. W. Bailey pending before the Investigating Committee of the State Senate and House of Representatives of the Texas Legislature.

To said Honorable Committee:

Now comes William A. Cocke, a member of the Thirtieth House of Representatives, Texas Legislature, and, upon information and belief, alleges and charges J. W. Bailey as follows:

* * * * * * *

"Second. That during the early months of the year 1900, J. W. Bailey entered into an agreement with one John Francis, brother of David R. Francis of Missouri, as well as with said D. B. Francis and one Joseph Sibley of Pennsylvania, together with H. C. Pierce of the Waters Pierce Oil Company of Missouri (in consideration of which agreement and conspiracy and the services to be rendered thereunder by the said J. W. Bailey he was to be assisted in the purchase of the Gibbs ranch in Dallas County, Texas), whereby the said J. W. Bailey undertook to use his personal, official and political influence and standing with his lifetime friend, Hon. Thomas S. Smith, then Attorney General of Texas, and with other state
429 officials, to the end that the Waters-Pierce Oil Company, then and now, a subsidiary company of the Standard Oil Company, might defeat the ouster judgment which had been rendered against it in favor of the State of Texas, by which said Waters-Pierce Oil Company would be enabled to re-enter the State of Texas in violation of law.

"Third. That in pursuance of said agreement aforesaid, and the conspiracy thereby created, the said J. W. Bailey on or about the 25th day of April, 1900, called upon H. C. Pierce in the City of St. Louis and then and there conspired with the said Pierce on behalf of the Waters-Pierce Oil Company and the Standard Oil Company to defeat the aforesaid judgment of the courts of Texas, as affirmed by the Supreme Court of the United States.

"Fourth.—That the said J. W. Bailey well knew, or by the exercise of that patriotic prudence which should characterize the trusted representatives of the people, should have known that the Waters Pierce Oil Company was an intra-state trust and an outlaw of the State of Texas; and that the said H. C. Pierce and other representatives of said Company were under indictment in the District

Court of McLennan County, Texas, for violation of the anti-trust law of the State.

"Fifth. That notwithstanding said knowledge, the said J. W. Bailey on the date aforesaid, and in pursuance of the conspiracy hereinbefore alleged, accepted employment from the Waters Pierce Oil Company and the said H. C. Pierce, and then and there did accept and receive the sum of at least $3,300 as a retainer fee for said services (pretending, however, that the said $3,300 was paid in the form of a loan); that said $3,300 was in fact and in truth, financial compensation, or a fee, for his personal, political and official influence in the premises.

"Sixth. That said J. W. Bailey's official duties then re-
430 quired his presence in the city of Washington; notwithstanding which, he returned to the State of Texas, in company with said H. C. Pierce and one J. B. Johnson, general attorney of the said Waters-Pierce Oil Company; that while en route to Texas the said J. W. Bailey conspired with the said H.C. Pierce and the said J. B. Johnson, not only to secure the fraudulent re-admission of the Waters-Pierce Oil Company to the State of Texas, but also conspired with the parties aforesaid to the end that certain penalty suits against said company, then pending at Waco, Texas, and the indictment and litigation herein above alluded to should be compromised and dismissed on the best possible terms; that in pursuance of said conspiracy the said J. W. Bailey while en route to Texas telegraphed to one Oscar L. Stribling of the law firm of Henry & Stribling of Waco, Texas, associate counsel for the State of Texas in the penalty suits aforesaid, to meet the said J. W. Bailey and his co-conspirators at Hillsboro, Texas, as they were en route from St. Louis, Mo., to Austin Texas; that said Stribling did not meet said parties at Hillsboro, as requested by said telegram from the said J. W. Bailey to *to do*; that the said J. W. Bailey and his co-conspirators failing to see said Stribling at Hillsboro came on to Waco, Texas, and there conferred with local counsel for the Waters-Pierce Oil Company, to-wit, George Clark, and Henry & Stribling, the latter firm being at that time associate counsel for the State of Texas, and with the District Judge before whom said penalty proceedings and indictments were then pending; that the purposes of said conferences was to arrange a legal disposition of the litigation aforesaid; that the said J. W. Bailey and his co-conspirators refrained at the time in question from calling upon one Cullen F. Thomas, county attorney of McLennan County, who then represented the State of Texas in the litigation pending at Waco, for the reason that the said Bailey and his
431 co-conspirators deemed it wise to arrange with other interested parties, including Henry & Stribling, before they should approach the said Cullen F. Thomas in the premises.

"Seventh. That the said J. W. Bailey, H. C. Pierce and J. D. Johnsen, then continued their journey to Austin, Texas, where the said J. W. Bailey exercised his political and personal influence with Thomas S. Smith, whom he had known and who had been his friend from boyhood, to induce the latter as the acting attorney general of Texas to consent to a compromise of the ouster judgment

against the said Waters Pierce Oil Company; failing in which the said J. W. Bailey then exercised his like influence with the said Thomas S. Smith to induce the latter to advise the Secretary of State to issue a new permit to the Waters-Pierce Oil Company upon its fraudulent dissolution and re-incorporation proposed by said J. W. Bailey to be had and without the necessity of mandamus proceedings; that the said J. W. Bailey likewise, and at the same time, to-wit, on or about the first day of May, 1900, exercised his personal, political and official influence with D. H. Hardy, then Secretary of State to induce the latter to issue a permit to the said Waters Pierce Oil Company to do business in Texas upon the fraudulent dissolution and fictitious re-organization aforesaid, thus avoiding the necessity of said company mandamusing said Hardy and judicially determin-g its right to re-enter Texas.

"Eighth. That the said J. W. Bailey and his co-conspirators thereupon returned from Austin, Texas, to Waco, Texas, and resumed negotiations looking to the dismissal of the litigation and indictment there pending and hereinbefore described; that the said J. W. Bailey on or about the second day of May, 1900, at the City of Waco, Texas, used his personal, political and official in-
432 fluence and prestige in an effort to secure the dismissal and compromise aforesaid and to that end did approve and endorse a proposition to pay to Henry & Stribling a sum of money about five times larger than there were entitled to by law under the proposed compromise with the State of Texas, and used said illegitimate offer as an inducement to the said Henry & Stribling, associate counsel for the state, to induce them to make an illegitimate dismissal or compromise of said litigation; that said J. W. Bailey at the time and place last mentioned used his personal, official and political influence with the District Judge before whom the litigation was pending in an effort to influence said official in the premises; that said J. W. Bailey and his co-conspirators did at the same time make an unsuccessful effort to secure the approval of Cullen F. Thomas of the illegitimate settlement sought to be had.

"Ninth. That during the month of June, 1900, said J. W. Bailey in furtherance of the conspiracy hereinbefore alleged participated in, endorsed, approved or connived at the payment to Oscar L. Stribling of the firm of Henry & Stribling aforesaid, the sum of $1500 as "hush money" to induce the said Stribling of the said Henry & Stribling to refrain from discharging their official duties by exposing the fraud involved in the re-admission of the Waters-Pierce Oil Company to the State of Texas on or about the thirty first day of May, 1900, and from prosecuting the litigation then pending against said company; that said J. W. Bailey had been advised by the public press of the State that the re-admission aforesaid was openly charged to be fraudulent and in violation of the rights of the State of Texas, and that he was also advised thereof by correspondence passing between himself and J. D. Johnson, or himself and H. C. Pierce, or himself and George Clark, which facts were well calculated to put said J. W. Bailey upon notice (although

it is here alleged that he already well knew the fact) that he
433 was representing interests adverse to those of the people of his state; that the $1500 "hush money" aforesaid was falsely styled a "personal loan" in an effort to cunningly conceal the real nature of the transaction in the event of its subsequent disclosure, as was also the case with the $3300 paid direct to said J. W. Bailey by said H. C. Pierce on April 15, 1900; that notes were executed for the said $3300 and the said $1500 in furtherance of this adroit advice to deceive the people of Texas as to the actual character of their monetary dealings."

* * * * * * *

"Eleventh. That the said J. W. Bailey, during the month of November, 1900, received of H. C. Pierce for the account of the Waters-Pierce Oil Company the sum of $200 after being fully advised of the illegal and fraudulent status of said company in the matter of its re-admission to the State of Texas; that during the year 1900, said J. W. Bailey likewise had other and further financial dealings with the Waters-Pierce Oil Company, of which your informant is not advised, but which should be investigated.

"Twelfth. That some time after the re-admission of the Waters-Pierce Oil Company to the State of Texas and the fraudulent dismissal of the litigation then pending against said company, and its officers at Waco, Texas, said J. W. Bailey had used his personal, political and official influence to "quiet all Texas parties," he, said J. W. Bailey, received from the Standard Oil Company of New Jersey, or the Waters-Pierce Oil Company of Missouri, the additional sum of $100,000 as compensation to said J. W. Bailey for the exercise of his influence aforesaid, notwithstanding said J. W. Bailey, under oath, in the month of January, 1901, and many times thereafter, denied that he ever received any money from the
434 Standard Oil Company, or the Waters Pierce Oil Company."

* * * * * * *

"Eighteenth. That during the month of March, 1901, the said J. W. Bailey left his official duties in Washington and returned to the State of Texas for the purpose of using his personal, political and official influence and prestige with the Legislature of Texas to defeat the Senate bill No. 164 introduced into said body by Senators Grinnan and Davidson, which act affected adversely the interests of the Waters-Pierce Oil Company, and to defeat House bill No. 422 introduced by Representative D. A. McFall, seeking to revoke the alleged fraudulently acquired permit to do business by the fictitiously re-organized and re-admitted Waters-Pierce Oil Company, secured on the 31st day of May, 1900."

"Nineteenth. The said J. W. Bailey in furtherance of his political efforts and official influence just described, wrote to H. C. Pierce on the 25th day of March, 1901, for the sum of $1750, which he now claims was a part of the $8000 hereinabove alluded to, but which was in fact also used by said J. W. Bailey to influence legislation in Texas, or was appropriated by him as compensation for services so rendered, although the said J. W. Bailey has since falsely claimed

that the said services were rendered gratuitously because he deemed their passage of such legislation a reflection upon his official character and standing."

* * * * * * *

Very respectfully submitted,

WILLIAM A. COCKE,

Member of House of Representatives Thirtieth Texas Legislature.

435 Defendant next introduced in evidence the following article from the Austin Daily Tribune of date Sunday, February 17, 1907:

"The Sequence and Consequence.

1900.

May 31. Waters-Pierce Oil Company re-admitted.

June 5. George Clark writes Johnson, "Hell broke loose in Texas. Stribling threatens receiver. Have Bailey make some suggestions to him."

June 12. H. C. Pierce wires Finlay from Lake Nabogoman, "If Johnson approves, authorize Bailey to loan Stribling $1500 on his note. Bailey should quiet all Texas Parties. Tell him I will see him soon."

June 13. J. W. Bailey reaches Gainesville from Washington. Draws draft on H. C. Pierce for $1500.

June 15. Waters-Pierce Oil Company issues voucher for $1500 to Henry & Stribling.

June 16. Johnson writes Clark he has succeeded in satisfying, for the time being at least, Henry & Stribling. This is strictly confidential.

Nov. 5. Waco, Texas, penalty suits dismissed by district Judge about this date.

Nov. 9. Clark writes Johnson confidential letter regarding same.

Nov. 12. Johnson writes Clark it is better for Stribling not to come to St. Louis, that if he insists on seeing him now that he will arrange to meet him at some convenient point—to tell Stribling so, and if necessary he will write Stribling a letter direct, under cover to Clark.

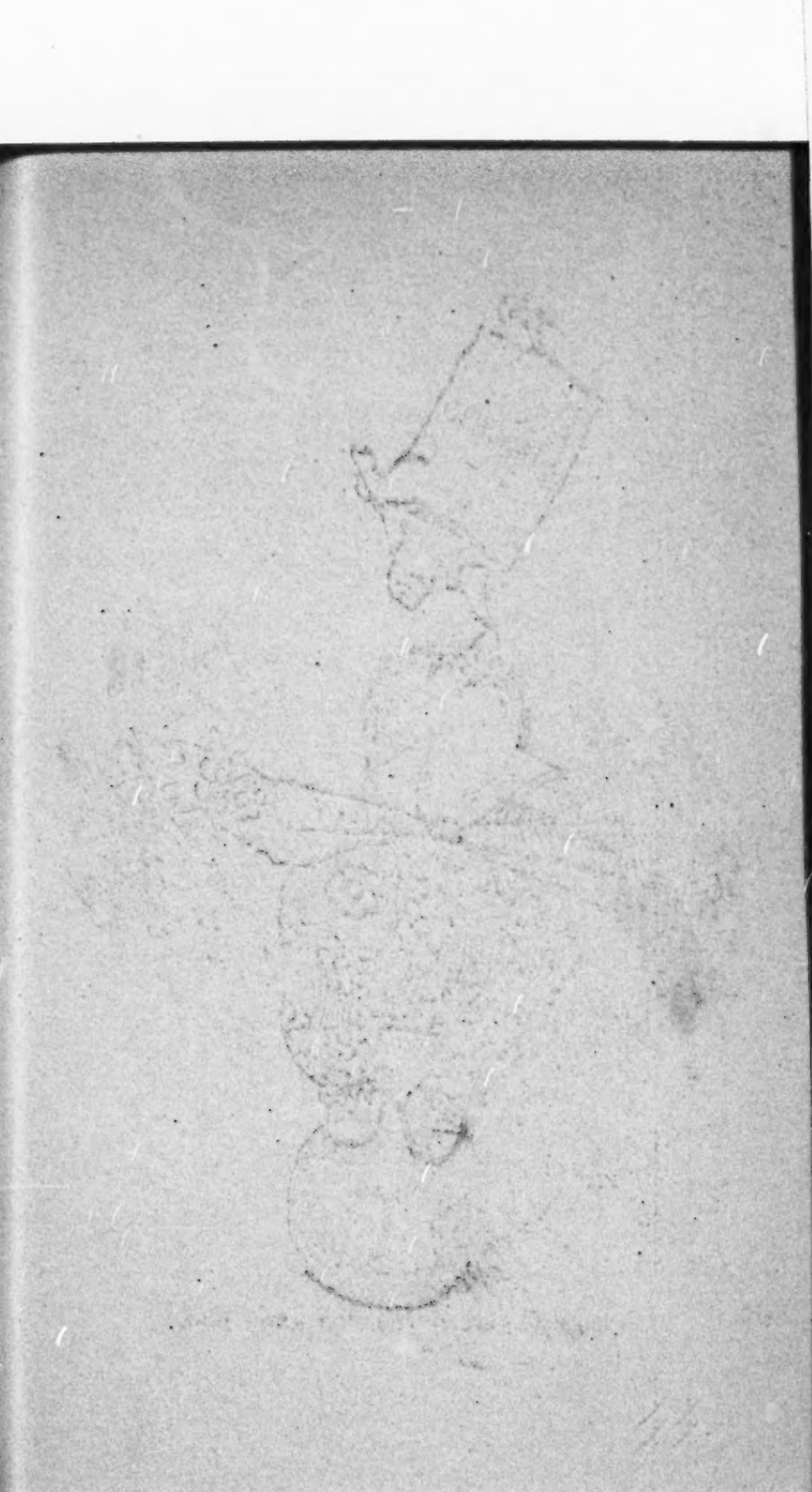
436

Nov. 15. Clark writes Johnson that he had been unable to convince Stribling; that he would leave there on the following Monday for St. Louis.

Nov. 17. Clark's letter reached St. Louis, and notation made on Henry & Stribling's voucher that the draft had been that day delivered to H. C. Pierce by Mr. Gruet.

Nov. 19. Stribling reaches St. Louis.

Nov. 20. Waters-Pierce Oil Company issued voucher to H. C. Pierce for $3100, paid to J. D. Johnson, on account of Waco, Texas, penalty suits, which was explained as being an expenditure to renovate a car on account of small pox in May proceedings. * * * Mr. Stribling has said it was paid to him to lobby some prospective legislation.



JUST AS EASY—IF YOU ONLY KNOW HOW.

Dec. 22. David R. Francis wrote to Pierce enclosing his Personal check for $4800 to pay Bailey's indebtedness to said Pierce, and requested to be advised if Bailey was due anything further. On same day Francis wrote Bailey, stating what he had said to Pierce, and enclosing Bailey's receipt for $3300 and also Bailey's sight draft drawn at Gainesville, Texas, June 13, 1900, for $1500.

NOTE.—It is a shame that D. R. Francis should get things so mixed up, because Senator Bailey in his letter to the Attorney General, dated December 6, 1906, said that he had paid back that $3300 himself, when he sold his horse, which he did in the summer shortly after the adjournment of Congress. Also a shame about the draft, because he said he had never heard of any such draft and would resign his seat in congress if anybody would produce same; that the whole transaction was a forgery.

437 In a speech at the Opera House at Austin, Senator Bailey stated that he had no more to do with the $1500 draft or that transaction, than Charles Fred Tucker had to do with the salvation of immortal souls."

Defendant next introduced in evidence the following cartoon as same appeared printed on page 1 of the Austin Daily Tribune of date February 24, 1907:

(Here follows facsimile marked p. 438.)

439 Defendant next introduced in evidence the headlines to, and portions of, an article appearing in the Austin Daily Tribune of date Friday, February 8, 1907, which were as follows:

"Trusts are Plundering the People of Texas.

Attorney General Davidson Declares that Certain Trusts are Operating in State and that Powers of His Office are Inadequate."

* * * * * * *

"To the Honorable Speaker and Members of the House of Representatives, Austin, Texas.

GENTLEMEN: I beg to acknowledge the receipt of the resolution adopted by the House of Representatives on January 17, 1907, which is as follows:

* * * * * * *

"The Oil Trust.

"The State had filed a suit in the District Court of Travis County against one of the branches of the Standard Oil Trust—the Waters Pierce Oil Company. That company is the retail distributing branch of the Standard Oil Company for the Southwest and the Republic of Mexico. The Standard Oil Company is not doing business in Texas under that name. No permit has been issued to any corporation by that name to do business in Texas. We believe it owns other corporations in Texas, such as refining companies, pipe line companies and producing companies, and have secured some testimony to substantiate our opinion. Each concern is maintained independently of all the others, yet dominated from a central
440 organization. The methods of Standard Oil are more secretive than all the other trusts combined. The stock of some of these corporations owned by the Standard Oil Company stands in the name of a half dozen intermediate corporations before it is finally lodged at 26 Broadway. For illustration: The controlling interest of the Jones Oil Company of Texas will be owned by the Brown Oil Company of Indiana, which in turn is owned by the Smith Oil Company of Ohio, which latter corporation will be owned by the Standard Oil Company of New Jersey. A suit filed against the Jones Oil Company in Texas for being a member of a trust must be traced through Indiana and Ohio to New Jersey by competent legal testimony before you can show its relation with the parent of the trusts. The records of the office of the Secretary of State would probably show that John Doe, Richard Doe, and Bill Smith owned the stock."

* * * * * * *

Defendant next introduced in evidence the headlines to, and portions of the proceedings had and testimony taken before the Legislative Investigating Committee in the Bailey Investigation, as same

were reported by and appeared in the Austin Tribune of date Tuesday, January 29, 1907, as follows:

"Vouchers not Forgeries Gruet Tells Committee.

Former Secretary of Waters-Pierce Subjected to the Keenest Cross-Questions Last Night—Naudain Testifies.

441 "Given to him to be kept from the general files of the office as confidential matters, according to his testimony, the vouchers in the possession of the Attorney General were explained thoroughly last evening before the Investigating Committee by J. P. Gruet, who has been the most conspicuous figure in the present controversy over Senator Bailey. "I turned the papers and vouchers over to the Hearst papers because of the attitude of Mr. Bailey towards me in his speeches in Texas during the campaign," was the answer given by Mr. Gruet when asked why he gave that long two-page interview to the Chicago Examiner. Detailed explanations were given to the papers in turn as they were exhibited by Mr. Crane to Mr. Gruet, and his testimony has been the most damaging of any given before the committee. He made no attempt to deny or conceal the fact that he gave his interview because of Mr. Bailey's numerous attacks upon him in speeches made in the State. He occupied the stand during the entire time of the evening session, and submitted to a searching cross-examination by Mr. Odell.

Testimony Not Hearsay.

Mr. Gruet gave his testimony not from hearsay, but from knowledge secured by several years' experience with the Waters-Pierce Oil Company. His employment as secretary of that company during the time in which they had an agreement with the Standard Oil trust and his duties were recited by Mr. Gruet together with the method of corresponding with the head office at 26 Broadway, New York. He stated that each branch of the Standard Oil Company sent a representative to convene at 26 Broadway. Mr. Odell objected to the testimony as being irrelevant and Senator Looney asked Mr. Gruet if his testimony was based on actual experience or hearsay. Mr. Gruet replied that he had attended those board meetings. This testimony was given to show the relation
442 of the Waters Pierce Oil Company with the Standard Oil Company.

Vouchers Not Forgeries.

When asked to explain the $3300 voucher, Mr. Gruet said that he approved it for payment and that Mr. Pierce signed it. "I put in the voucher the words, 'on account of Texas cases' by Mr. Pierce's instructions", he added. "I don't know whether it was before or after it was audited."

In reply to a question asked by Mr. Crane, Mr. Gruet said that he took possession of the vouchers at the request of Mr. Pierce. He was asked if Mr. Pierce ever stated why he wanted them kept

by him. Mr. Gruet replied that Mr. Pierce never explained any further than to say that they were confidential matters and he wished them kept in his (Mr. Gruet's) private files.

"Fees in the Waco civil cases", written on the Henry & Stribling voucher was explained by Mr. Gruet as being the handwriting of Mr. Finlay. He said that the receipt for the $1500 was in his and Mr. Pierce's handwriting and that it indicates on the face of it that the Waters-Pierce Oil Company paid Mr. Bailey $1500 on account of Texas cases.

Audited by Standard Oil Man.

Mr. Gruet's attention was called to the letter written by Mr. Bailey at Gainesville, Texas, and at this point he was asked who H. H. Stein was. He replied that Mr. Stein was auditor for the Standard Oil Company. The witness stated that he wrote the $3100 voucher except the notation as to what it was for, and that was written by his son. The voucher for $200 was made by the witness according to instructions from Mr. Pierce. It was receipted by Mr. Pierce and audited by Mr. Stein of the Standard Oil Company.

443 With regard to the letter from Mr. Pierce to Mr. Bailey, the witness stated that it was signed by Mr. Stewart, the stenographer of Mr. Pierce. He stated that he had no other authority for issuing the voucher and there was no complaint made because of it. He stated that he had the cashier make out the exchange for $1750 and sent it to Mr. Bailey at Gainesville. Mr. Gruet stated that the note dated March 1, 1900, was carried by voucher which he made out. Mr. Pierce had sent the money to Mr. Bailey. It was audited by C. W. Norman, a Standard Oil auditor.

Mr. Crane asked if these transactions were included in the reports made to the Standard Oil Company. Mr. Gruet replied that they were not specialized. He said that Wade Hampton was in charge of the Standard Oil Company auditors.

"These transactions were charged up to profit and loss," said Mr. Gruet, "and I know it, because I worked up all of the finals of the profit and loss account."

Mr. Gruet recired all of the transactions he had with Mr. Pierce in connection with the Tennessee Construction Company."

* * * * * * *

"Naudain's Testimony.

"H. Naudain, auditor of the Waters-Pierce Oil Company, occupied the stand yesterday afternoon. Mr. Naudain's mission here was to say whether or not the papers introduced into the cases were originals or otherwise, although the Bailey people admit that they are original.

Mr. Naudain stated that he had been with the Waters-Pierce Oil Company for thirteen years in the capacity as auditor. He testified that the voucher for $3300 under date of June 30, 1900,

444 was made out in the handwriting of J. P. Gruet. He testified to the proper auditing of the telegram and the voucher.

He said that the voucher dated November 23, 1900, and marked "account of Texas cases," appeared to be genuine.

It was suggested at this point that the books throughout should not be examined, as they represented private transactions, and that only the matters touching Mr. Bailey should be looked into.

The further testimony was a repetition of the testimony Mr. Naudain gave a few days ago before the assistant Attorney General, and was merely a general identification of the genuineness of the papers."

* * * * * * *

The defendant next introduced in evidence the headlines to, and a portion of the report of the proceedings had and testimony taken before the Legislative Investigation Committee in the Bailey Investigation, as same was published in the Austin Daily Tribune of date Wednesday, January 30, 1907, as follows:

"Testimony of the Younger Gruet Proves Voucher Entries Correct.

Evidence Given by His Father Fully Corroborated Before the Committee Today—Explanations of Flateua Letter Given—
Bailey Makes Sensational Play Last Night.

"The prosecution in the investigation of Senator Bailey have now established the proof of their contention that his dealings which are shown in the vouchers were with the Waters-Pierce Oil Company. The name of Mr. Bailey is in the voucher in con-
445 nection with the supposed loans and the writing has been identified. The attorneys for Mr. Bailey have tried in vain to prove that the alterations were made by Mr. Gruet after he had left the employ of the company, but without avail. In the testimony of J. P. Gruet, Jr., which was taken at the session of the committee in the morning, the testimony of his father, J. P. Gruet, Sr., was corroborated in every detail."

* * * * * * *

The defendant next introduced in evidence the headlines to, and a portion of an article concerning, and a portion of a resolution introduced in the House of Representatives of the Texas Legislature for the purpose of ordering an investigation of Senator Bailey, as same appeared and was reported in the Austin Daily Tribune of date Wednesday, January 9, 1907, as follows:

"Resolutions Demand Full Investigation of Bailey.

Many Legislators Will Insist Upon More Light on the Recent Charges Against Senator.

"Resolutions demanding the investigation of the conduct of Senator Joseph W. Bailey in his deals with H. Clay Pierce, signed by twenty-seven members of the house, were filed about the time the motion to take a recess was being put to-day in the house of

representatives. The signatures of the twenty-seven members were secured within an hour's time, and a number of others are expected to add their names to it at the first opportunity. The resolution is as follows:"

* * * * * * *

446 "And that notwithstanding the said Waters-Pierce Oil Company secured its re-admission and a new permit to do business in Texas through fraud and perjury, and notwithstanding the said company has thence until now been continuously violating the anti-trust laws of the State, driving out, destroying, or absorbing all competition so as to oppressively and arbitrarily dictate the prices of oil and all products dealt in by said company in the State of Texas, that the said Joseph W. Bailey was continuously from that time engaged in large financial transactions with the said H. Clay Pierce, President of said Company, and has used his senatorial and personal influence in the State of Texas to secure and protect the said Waters Pierce Oil Company in its aforesaid violations of the Texas anti-trust laws and in its method of destroying and removing competition and in establishing and maintaining a monopoly of the business embraced within the charter of said corporation;"

* * * * * * *

The Defendant next introduced in evidence the following article published and appearing in the Austin Daily Tribune of date Sunday, December 23, 1906, viz:

"The Trail of the Octopus.

(A modern melodrama of frenzied finance in two acts. Especially adapted for the use of captains of industry and professional politicians. Too heavy for amateurs.

447 *Cast of Characters.*

H. Clay Pierce, one of the tentacles.

David R. Francis, the mysterious Missourian.

Act. I.—Palatial home of H. Clay Pierce. Curtain rises disclosing the oil magnate seated in his sumptuous library, chewing a black cigar in great agitation.

(Enter David R.)

Francis.—You sent for me?

Pierce—Yes, David, old fellow; I am up against the real thing in Texas.

Francis.—Too bad. What's the matter?

Pierce.—Matter enough. My company, the Waters-Pierce, is forever enjoined from doing business in Texas.

Francis.—I am very sorry to hear that.

Pierce—Yes, and the worst of it is I am indicted by a Grand Jury at Waco, Texas.

Francis—That is too bad. Who were your attorneys, and did they know their business?

Pierce.—We had the best lawyers money could obtain, and they fought a good fight and lost, and I have no complaint to make at their efforts or abilities, and so satisfied are we with their legal attainments that we have employed them by the year to attend to all our legal affairs.

Francis.—Pierce, you have been going at this thing wrong. You don't need law nor lawyers; you need influence and need it badly.

Pierce.—Well, David, you have been recommended to me as the proper person to see about this influence business, and I have been told that you know a great many people in Texas, and as I am a stranger you can advise what to do.

Francis. Pierce I can put you in touch with a live wire that can do the very work you need, but it will be somewhat expensive.

448 Pierce.—We care nothing for expense. You see, David, we make about 700 per cent. profit and expense is no object.

Francis.—Do you know Senator Bailey?

Pierce.—No, I have never had the pleasure of meeting him.

Francis.—You must meet him. He is the very man; he is a fine looking fellow, possessing a very pleasing personality.

Pierce.—Can a fellow talk to him about confidential matters?

Francis.—Yes—when there is money in it.

Pierce.—I understand you, David; but how am I to see him?

Francis.—I will give you a letter of introduction. You see, the Senator and I are bosom friends, and he will talk to you more freely with an introduction coming from me.

Pierce—Whatever is done in this matter must be done right away. We have but a few days more of grace in Texas. How am I to see the Senator to give him the letter of introduction Can you suggest a plan?

Francis.—Yes, I will telegraph him to come to St. Louis at once.

Pierce.—Write out the telegram and get it off.

Francis.—(Writes) Senator Joseph W. Bailey, Gainesville, Texas. Come St. Louis first trian. Big fee to you and no work. David R. Francis.

Pierce.—Look here, Francis, can I really approach the Senator?

Francis—Yes, but you must go about it in a gentle way. You see, Pierce, Bailey is loved by the Texas people, and there is not a man in Texas who can head him off on gab. He is one of those fellows that always lines up in Congress, making big speeches in the interest of the people, but he is smooth enough to never introduce and get passed a law in the interest of the people. Confidentially, he is a good man for the corporations, for by his long speeches

449 he helps to delay legislation. So you need not be afraid; I am steering you against the real thing, and he will do the work.

Francis.—Before you see him I will tell him that everything is all right; that I have given you a letter and you want him to help you.

Pierce.—Must I offer him *to* pay to do this?

Francis.—Certainly. He will most likely refuse to accept, but in

lieu will request of you a loan. You must favor him and he can pay the note in services to be rendered, you understand.

Pierce.—The very thing. Why haven't we thought of this before?

Francis.—Yes, Pierce; you have been working the wrong way. It is not law you need in Texas—its influence, and a good deal of it.

Pierce.—David, do you think Bailey is the man to work the game?

Francis.—Yes. He is the only man in Texas who has the influence that has the nerve to go against the proposition, and besides, Bailey is supposed to — one of the plain people. You see, when he first entered Congress he refused to even dress in any but the plainest of clothing, and made speeches in the interest of the people, and would not accept pay for the days he was absent from his seat in Congress, and he was very particular to see that his speeches were published and that his refusal to accept pay for the days when absent from roll call, all of which has endeared him to the people of Texas, and they will not suspect him of doing them any harm.

Pierce.—He is the man I want. I could give such a fellow as that employment the year 'round."

Francis.—The senator will be here tomorrow. You can arrange with him, and my word for it, he will have the whole thing
450 running smoothly for you in Texas within thrity days.

Pierce.—Francis, I am very grateful to you for the information given, and will be glad to report success to you later.

Act II.—Some months later. Scene, same as in the first Act. Francis and Pierce discovered seated.

Francis.—Well, Clay how did she work?

Pierce.—Say, David that fellow Bailey is a peach. Talk about a pull! He's got it in Texas.

Francis.—Pierce, did you pay him in a loan or a fee?

Pierce.—Loan, of course. You see, the senator is a little shy about calling it fees, but he is great on the loan proposition.

Francis.—What is the difference to you?

Pierce.—None. I am not kicking, but say, Francis, when is he likely to quit striking me for a loan?

Francis.—Don't be afraid of Bailey. You let him have a loan every time he asks for it. You will need him to help you out all along.

Pierce.—Yes, you are correct. I can use him to advantage in the future. My experience in this Texas matter has taught me that it is a pull you need, and not law, and Bailey fills the bill and I am satisfied."

451 *Agreement of Counsel.*

It was here admitted by both sides that about January 31, 1907, it was published in the local papers, both the Austin Statesman and the Austin Tribune, and in the Houston Chronicle, that in the Investigation before the Legislative Investigating Committee, the witnesses J. P. Gruet, Sr., H. Naudain, A. M. Finlay and A. J. Hutchinson, had testified to the genuineness of the vouchers and other papers described in the letter from Attorney General Davidson to

Hon. J. W. Bailey, dated Austin, Texas, December 7, 1906, as published in the Austin Dailey Tribune of Sunday, December 9, 1906, which letter, as published has already been read in evidence; and that such local papers and the Houston Chronicle further stated in the issues about January 31, 1907, that said documents described in said letter had been introduced in evidence before said Legislative Investigating Committee. And further, that said local papers and the Houston Chronicle, in issues about said January 31, 1907, published that J. P. Gruet, Sr., testified before said Legislative Investigating Committee that said vouchers had been audited by auditors of the Standard Oil Company.

It is not meant by this agreement to withdraw any testimony which has heretofore been introduced, but simply to cut off further inquiry into matters introduced before that Legislative Investigating Committee.

It was here admitted by counsel for both the state and defendant that the various copies of the Austin Statesman, Austin Tribune, Houston Chronicle, and K. Lamity's Harpoon, portions of which had been introduced in evidence by defendant and showing the publication therein, respectively of the various articles above set out, were true copies of such papers of the respective dates named, as published and circulated.

452 J. GREGG HILL, for the State, testified as follows:

My name is J. Gregg Hill, and I am engaged in the real estate business in Austin. I have been engaged in that business four or five years. I have lived in Austin since 1887. I am fairly well acquainted with the people here. I heard this case discussed to some extent during the campaign in regard to the election held here in January to instruct our representatives whether they should vote for or against Mr. Bailey. That was in connection with Senator Bailey's alleged participation in the affairs of the Waters Pierce Oil Company. I have not heard any independent discussion of the merits of this case or the issues involved in this case outside of Senator Bailey's connection with it. I have not heard the matter discussed with reference to whether or not the defendant in this case can get a fair and impartial trial. I have not heard any reason given or any views nor any opinion stated to the effect that the defendant can not get a fair and impartial trial. I do not know of any reason why the defendant could not get a fair and impartial trial of this case in this county; I think they should be able to do so. I have been summoned as a witness in this case; I was summoned by the defense, is my understanding. From what I have heard of this case, I think the defendant can obtain a fair and impartial jury among the jurors of this county without any trouble. I could try this case fairly alike to both sides on the evidence and the law as given on the trial of the case.

Cross-examination:

As to my belief in reference to whether or not the Waters Pierce Oil Company is guilty, I don't know anything about the case
453 further than I heard discussed in the Bailey campaign. It is a fact that I was very active in my opposition to Senator

Bailey. As to the basis of my opposition to him, I thought that he had lied to his constituents, and I don't think any man in his position, trying to represent the people, should turn around and represent an interest whose acts might have to be passed on by legislation in which he might have to take part. I did not know anything about whether the Waters Pierce Oil Company was a trust or not. From what I had read in the newspapers I thought it was a trust, and believe so now. I believed at that time that its admission into Texas was procured by fraud, and that Senator Bailey did it. If I were taken on the jury I would go into the jury box with that belief, but at the same time I could give them a fair trial, as any honorable man should do. That statement is based on my idea that any fair and impartial man can, in a case of this kind, lay aside any preconceived opinion and render an impartial verdict; in a good many cases he might not do so. I make the distinction because in some cases it might be that a man's friends or relatives were involved, but not in this case. My idea is that if a man were not interested in it, no matter how thoroughly convinced he might be, he could lay his opinion aside and go into the jury box, though he might not be able to do so. I believe it is within the range of possibility for a man to do that, and I believe it is within the range of probability. In reference to whether or not I could go into the jury box and consider the testimony of H. Clay Pierce and other officers of the company as fairly as if I didn't have any preconceived opinion with reference to this case, I would take the evidence and the law and give them what I thought to be absolute justice. If the evidence showed otherwise, I would not believe that absolute justice would mean to shut the defendant out of the State of Texas. I would be governed by the law and the evidence. Unless the evidence showed otherwise, I would shut them out, and so would any other sensible man, I think.

454 During the six months that this matter has been under consideration I don't remember of having heard one man undertake to justify the Waters Pierce Oil Company or speak a good word for it in this county. While I have not heard hundreds of men denounce the Waters Pierce Oil Company as a trust, I have heard quite a number do so; I heard dozens in the city denounce it, but I would not say that I heard dozens from other portions of the county do so. As I said a while ago, in connection with the Bailey election, I did hear it denounced. I don't remember the date when the violent opposition in this county to Senator Bailey developed. Personally, I had not fully made up my mind as to how I stood in the Bailey matter until after Senator Bailey stated that he had not done certain things, and afterwards admitted that he had done them; from that time on I opposed him. I read Attorney General Davidson's letter to Senator Bailey in which he discussed the Waters Pierce Oil Company and said that Senator Bailey had wrought great oppression on the people of this State and that for six years the people of Texas had lived under the shadow of a great wrong brought about by Senator Bailey. I don't know whether that leter was read generally in the city of Austin or not. I don't know wiether the letter was published in both the newspapers of Austin or not, but I read it in the "Statesman." I could not say whether it was published in the

"Tribune" or not. I think that a great many people who read newspapers, not only in this county but all over the State, have formed their opinions and believe that the Waters Pierce Oil Company is a trust. I don't know whether or not a majority of the people of this county believe it is a trust, as I have not talked to them about it. I have expressed the opinion that the defendant can get a fair trial here because I believe the people of the county are just as fair and intelligent as in any other county. I can lay aside my opinion and weigh the evidence of Mr. Pierce and other officials of the company like I would that of any other witness, and would give them what I thought to be fair and just in the matter. In arriving at the credence I thought should be given to their testimony, if I were on the jury, I would not be governed by the fact that a man had done something before, because I would have to be governed by the evidence. I know that I can blot out everything in my mind; it would not be a sudden transformation, but just my desire and willingness to do justice in the case. I would not prefer to see the Waters Pierce Oil Company defeated in this case; I would expect to see them get justice. I don't know that my idea is that the defeat of the company in this case would be justice, because I don't know what the case would be. If they deserve to be run out, they should be run out, like any other trust or anybody else; if they are innocent, they should be defended, like any one else. As to my reason for believing the defendant can get a fair trial of this case in this county, I think there are hundreds of people in Travis county who have no prejudice one way or the other. I have not talked to very many; I have heard expressions from a dozen or two, but not hundreds.

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I attended the speaking here in the court-house when Colonel Wynne and Judge Terrell addressed the people during the Bailey campaign preceding the election held in January last. Judge Terrell in his speech very bitterly denounced the Waters Pierce Oil Company and Senator Bailey for his connection with it, but I did not applaud his speech. He was applauded when he denounced the Waters Pierce Oil Company and Henry Clay Pierce. He also denounced Senator Bailey. The Court-room was full at the time. The sentiments Judge Terrell expressed met with general approval of the audience, but it was for this reason: The Bailey people had a meeting elsewhere, and those who came to hear Judge Terrell were in sympathy with his side of it. I am acquainted with Judge Terrell. He has lived in this county for a great many years, and I believe he was once District Judge here, but that was before my time. I know that he has been State Senator and also a member of the House of Representatives, and he was Minister to Turkey during President Cleveland's administration. Judge Terrell is and has been for many years a man of very strong influence in Travis County. I also heard Taylor Moore speak here and at Manor. Mr. Moore in his speech here very violently denounced the Waters Pierce Oil Company, Henry Clay Pierce and Senator Bailey for his connection with the company. The house was full at the time; I don't remember whether there were any people standing up or not that night, but there was a good crowd. The sentiments expressed by Mr. Moore

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were roundly applauded by the audience. As to whether or not Mr. Moore is a master at vituperation, he seems to understand his business very well. His speech at Manor was delivered early in the morning. He had a very poor audience at Manor, only about forty people being present. He discussed the Waters Pierce Oil Company and denounced it down there; he declared that its admission into Texas was procured by fraud, and he denounced Mr. Bailey for his alleged connection with it, along the same lines as in his speech in Austin. His speech at Manor was not as roundly applauded as the one here, but it was applauded to a certain extent. I went from here to Manor with Mr. Moore in a buggy. I was doing all I could against Senator Bailey. The only speeches I heard were here and at Manor. I did not hear Mr. Cocke make a speech here. I would have liked to hear his speech. The only speeches I heard were at Manor and the one here at the Court house and Senator Bailey's speech at the opera House. I helped send out literature during that campaign, charging the Waters Pierce Oil Company with be-
457 ing a trust. I don't think we charged that its admission into Texas was secured by fraud; I don't remember exactly. We tried to get literature into the hands of every voter in the county. The literature we sent out denounced the Waters Pierce Oil Company and Senator Bailey. I don't think it was violent in its terms; we had to restrict ourselves. As to Mr. Bailey, I would not consider any language violent; as to the Waters Pierce Oil Company, such is not the case. I consider the Waters Pierce Oil Company some better than the Senator. I was Chairman of the Anti-Bailey campaign committee in Travis County, and all of the literature was sent out under my supervision. We made other charges against Mr. Bailey than his connection with the Waters Pierce Oil Company, but that was the main thing. I don't reme-ber exactly how much money we spent in that campaign; it was somewhere between five and six hundred dollars. That money was subscribed by people in the city of Austin. It was not a very large list of contributors to the fund, because we had some men who contributed liberally to it. I contributed to the fund. I don't know just how much that election cost me; perhaps forty or fifty dollars. I did not spend that money to prove that the Waters Pierce Oil Company was a trust and that Senator Bailey was representing them; we were fighting Senator Bailey for his connection with the Waters Pierce Oil Compnay and for misrepresenting the facts to the people. If I had not thought the Waters Pierce Oil Company was a trust and operating in violation of the law, as to whether or not I would have opposed Senator Bailey, I will say: I would oppose any man who would say one thing and then turn around, in other words, I will fight any politician who lies to the people, I don't care who he is.

In reference to whether or not I am still willing to swear that the defendant can get a fair trial in this county, there are as
458 many Bailey men as anti-Bailey men in Travis County. I think every good citizen wants to see the defendant gets justice. As to whether or not I would disqualify myself if called as a juror, that would depend on the questions. If I were called as a juror and the question were asked me, "Mr. Hill, have you any bias

in favor of or against the Waters Pierce Oil Company?" I would have to say, frankly, from what I have read in the papers regarding their actions, I am biased against them. I do not believe I am prejudiced against the Waters Pierce Oil Company. As to whether or not I understand the word "prejudice," it has different meanings. I mean in the sense of hostility or enmity. If it means prejudgment, I would say that I don't know enough about the case to be able to judge. With the statement that the issues in the case are that the defendant is a trust, that it is operating in violation of the law, and that it was brough- into the State by fraud, I will say that it was brought into the State — those issues. Regarding trusts, I think a trust should be made to obey the law. I know that trusts are denounced by the laws of Texas and other States. I know that all corporations are not trusts. What I mean is this: I believe that railroads and oil companies and telegraph companies are necessary, but I don't believe it is right for any of them to enter into combinations to control things. I don't know whether the defendant is a trust or not.

Redirect examination:

I think that, notwithstanding what I have heard and read, I can qualify as a juror and give the defendant a fair trial. From what I know *th* the people of this county, I don't see any reason why you should not get many fair jurors.

With reference to the speeches made in the campaign, there
459 were some very warm speeches made in behalf of Senator Bailey. I heard Col. Dick Wynne of Fort Worth make a speech in the interest of Senator Bailey here. Senator Bailey also made speeches in his own interest. I heard him speak at the opera house. He denounced the Attorney General and nearly everybody else that was against him. Mr. Bailey himself is not a novice at vituperation. I did not hear Mr. Bailey's speech at the skating-rink. As to how many people the "Statesman" said were out to hear him at the skating-rink, the headlines said there were several thousand, and said that his speech was well received by the audience, and I heard on the street that the people there went wild. His vituperation was well received by the audience at the opera-house. I think a great many people who received letters sent out by our committee and by the other side simply pitched them into the waste basket, and many people who read the newspapers don't read the political news. As to the number of contributors to the Anti-Bailey fund, I should judge that there were not more than twenty-five; that is making a rough guess. It was hard for us to raise money in that campaign, and we have a bill hanging over us to-day, although we had two or three committees working. There were more men refused to contribute than did contribute. Our committees worked parts of two or three days trying to raise money. I don't know whether there was a Bailey fund raised in this county or not, but I know there was some money disbursed by them, because I could see them at it. I tried to find out how much money was disbursed on the other side, but could not. During the campaign I heard some discussion as to

the Waters Pierce Oil Company's being a trust. I did not hear it discussed by one party on one side claiming that it was a trust and by some one else claiming that it was not. I have not heard any discussion of what the State expects to prove nor of what the
460 defendant expects to prove as its defense in this case.

Recross-examination:

I have not kept any of the campaign literature we used; I think it has been destroyed. If we sent out any copies of a document issued by the "Good Government Club" at Houston and entitled, "The Shame of Texas," or something like that, I don't remember it. There were a few of those sent us here, but whether or not they were circulated I don't know.

WILL NEHRING, for the State, testified as follows:

I reside in Dessau, in Travis County. Dessau is about twelve miles North of Austin. I was summoned as a witness for the defense in this case, I think. I am Democratic Chairman at my voting box. I have resided there twenty-nine years. I am fairly well acquainted with the people living at Dessau and at Pflugerville and around there down as far as Manor. I have heard very little discussion concerning the Waters Pierce Oil Company among the people out there; it was mostly regarding Senator Bailey. I have heard mighty little discussion about the Waters Pierce Oil Company or the issues involved in this case independent of the Bailey matter. There was a great deal of discussion concerning Senator Bailey during the campaign. From what I have heard among the people of my section and the citizens of Austin, I believe the defendant can get a fair and impartial trial. As to how many men I think could be obtained at my box that would try this case fairly and impartially to both sides, I have not heard any of them discuss the matter. I think I could go into the jury box and try this case fairly and impartially.
461 I have no doubt on that subject. I could set aside my impressions and try the case on the evidence and the law.

Cross-examination:

I heard a great deal of discussion about Mr. Bailey when it first came out about him and the oil company; I mean the Standard, combined with the Waters Pierce. They were talking about that money that Mr. Bailey got that ought to have gone to the State, is the way I heard them talk about it. What I heard them talk about, they didn't think it was his place to work for the oil company; that's the way I understood it. I don't know whether the people thought the Waters Pierce Oil Company was a trust and that Mr. Bailey had been working for it knowing it was a trust or not, as I never heard them say. I heard them talking that the money Mr. Bailey got ought to have gone to the State—that it was money that belonged to the State and he put it into his pocket instead of paying it into the State Treasury; I think that was it, as well as I understood it. I think the defendant can get a fair and impartial trial in this county. I can't say whether or not the State ought to win in this case, as I

have not heard any evidence. I don't go by what I read in the papers nor by what I hear people say; I think I have to hear the evidence first. I voted against Mr. Bailey. There was mighty little interest taken in the election at my box. I think there were just fifteen votes there. I think there were five votes for Mr. Bailey and ten or eleven against him. I voted against Mr. Bailey because I thought he was not the man for the place, from what I had read about him. I didn't know what he had done with the money he got. I thought the Waters Pierce Oil Company was a trust. I don't know whether it ought to be put out of business in Texas or not. I don't know whether the most of the people out my way believe it is
462 a trust or not; I have not heard them say.

Redirect examination:

There are about fifty qualified jurors out there.

B. F. CAGLE, for the State, testified as follows:

My name is B. F. Cagle, and I live about three miles North-east of Austin, out here on the Manor road, in Travis County. Pecan Springs is my voting box. I moved to Pecan Springs last December a year ago. I lived down at Del Valle about twenty years, and am well acquainted with the people there. I am very well acquainted with the people in the Pecan Springs neighborhood, and have been for years. I don't think I heard much discussion at Pecan Springs or other points in the county about the Bailey Controversy, other than what I read in the papers. I did not hear much discussion concerning it, because I am at work all the time. There is no store near me; there is one at Fort Prairie, and stores here in Austin. I don't think I heard any discussion until I came here Monday morning as to whether or not the defendant can get a fair trial or not. The most I have heard talking about it said they thought they could get just as fair a trial in Travis county as anywhere in the United States or the State. I am a qualified juror. I think I could qualify as a juror in this case and try it fairly and impartially. I have no such opinion concerning this matter as that I could not go into the jury box and give the defendant a fair trial.

Cross-examination:

As to what I think of the Waters Pierce Oil Company, I don't know as I have ever given it any study or paid any attention whatever to it, because I have business to attend to at home and
463 we have legislators to attend to that. I may read articles, and give them a little thought, and go on. I am studying about my own business, that's the way I stand on it.

Redirect examination:

I never did ask by which side I was summoned as a witness in this case. I asked Judge Penn yesterday to use me so I could go.

Recross-examination:

I had heard no discussion about this matter until I came around the court-house, except that John Shelton one day asked me what

I thought about it and I told him, and he asked me if I thought Pierce could get a fair trial in this county, and I told him I thought he could, or any other man.

T. E. CATER, for the State, testified as follows:

I live at Fairview, about thirty miles up the river. I think there are about forty-eight qualified voters and qualified jurors at my box. I have not heard any discussion of the subject of whether or not the Waters Pierce Oil Company can secure a fair and impartial trial in this county nor as to the character of business in which it has been engaged in Texas. I did not hear any discussion of the Waters Pierce Oil Company, but I did hear discussion of Mr. Bailey during the Bailey controversy. I have not heard any discussion of Senator Bailey in connection with the re-admission of the Waters Pierce Oil Company. From what I have read and heard, I think the Waters Pierce Oil Company can get a fair and impartial trial in this county, I would not want to serve on the jury, but if I had to, I could qualify as a juror and try it on the facts and the law. I don't know anything about the issues in this case and I would be governed by the law and the facts.

464 Cross-examination:

I would not like to sit on the jury, from the simple fact that I have heard so much lately in regard to Mr. Bailey's being connected with it; it is just lately I have heard it. I don't mean that I would be afraid that I would not be able to do the right thing. That would be one reason, and there are other reasons, but I don't like to state what they are. I don't know whether the Waters Pierce Oil Company is a trust or not. I have heard the name of the Waters Pierce Oil Company, but don't know whether there is any such institution or not; if I ever came in contact with it, I didn't know it. I have heard Mr. Bailey discussed in connection with the people and Congress—that he was serving two masters at the same time—that he was serving the people in Congress and receiving money from a corporation when his time was due in Congress. As to what corporation it was, I don't know, but supposed to be the Waters Pierce Oil Company, and I never heard of his denying it. I accepted what I heard about it, and voted accordingly. As to what I mean by a fair trial, I would lay aside any prejudice that I might have against any company or any one else and try it on the evidence. If I had any prejudice I would not necessarily lay it aside; while the case was going on I would have no prejudice; when I was taken as a juror I would discard it, and take it up again after the case was over, just like my tobacco—quit once and commence again. If I were taken on the jury I would feel friendly to both sides. I have heard the name of H. C. Pierce, and heard him discussed in connection with Mr. Bailey; his name was discussed as president of the Waters Pierce Oil Company. I can't say that I have formed an opinion about it.

465 I have not heard it discussed as to whether Mr. Pierce's oil company was readmitted to do business in Texas through fraud or not. I never heard any mention of the fact that his company was put out of business here. I heard that he had been in-

dicted for taking money—not Mr. Pierce, but Mr. Bailey; that's the information I got. I don't say that I voted against him, and did not say it a while ago. I didn't vote in the last election at all; I voted in the general election last year. I mean by the last election the one they had to vote either for or against Bailey. I did not cast my vote then. I saw the tickets voted at that election. I was one of the judges at the election, but did not vote. There were four votes polled at my box in that election, and we had three judges at the election. I did not express my opinion about it there; I was too sharp for that, because I had other reasons for it. I- regard to my objections to expressing my opinion, I don't know as that would cut any ice here; I don't know as that would have any effect here. I don't think it would affect this case an iota, and it is a private matter that I don't want to disclose. That is my reason for not voting. It is a private reason, but I might use it publicly some other time. I refuse to use it now unless I have to do so. It would not pertain to this case or any other case in which I might be accepted as a juror. I was there all day at the election. I believe I was mistaken in saying that Mr. Bailey was indicted, but these accusations were brought against him. I don't really know that either Pierce or Bailey was indicted; I am not sure about that. As to how I came to hold the election, one of our judges up there came over and asked me to assist him.

Redirect examination.

There were four votes cast at our box at that election, and we had three judges. We have about forty-eight voters at that box.
466 The Waters Pierce Oil Company was not mentioned up there the day before the election, and there didn't seem to be any excitement about the Bailey question, and there has not been any since then.

THEODORE BOHLS, for the State, testified as follows:

I reside at Bee Cave, about fifteen miles Southwest of Austin. I was summoned here as a witness, but I don't know whether by the defendant or the plaintiff. I come to town pretty often sometimes, and attend to my business and go back home. I don't think we had any election on the Bailey question at Bee Cave. The papers were brought to me to hold the election, and I refused to hold it. I have heard the Waters Pierce Oil Company and the Bailey controversy mentioned once in a while, but paid no attention to it, and I don't remember whom I heard talking about it. I did not hear any discussion of the subject when I would come to Austin. I live in about the most thickly settled portion out there. There was no general discussion of the Waters Pierce Oil Company among the people out there. There was some talk about Mr. Bailey a few months ago out there. I glanced at some newspaper accounts of the matter at that time. From the attention I paid to it and from what I have heard, I think the Waters Pierce Oil Company can get a fair and impartial trial in this county. Fair and impartial jurors can be obtained around Bee Cave to try this case. I think I could go into the jury box and try this case with fairness and impartiality to both sides.

Cross-examination:

I suppose it is the case of the Waters Pierce Oil Company they are talking about that I could try fairly. I have never read enough to understand the foundation of it. I believe the talk was that
467 it was a trust. In passing by I might have heard it discussed. I never did ask anybody about it and never stood and listened to the arguments about it. There was more or less stir going on about it, but I took mighty little interest in it, because it was not concerning me. I heard them talking about the oil company, and I never paid heed to it nor read the papers to know what it was about—it didn't interest me enough to know. I said that I believe the defendant can get a fair trial here. I say that because I think we have honest men here that can be selected to try the case, as well as anywhere else. I did not know that a former case against this company had been tried until I heard it here; I don't remember of hearing of it before. In regard to the election held in this county last January, I knew about it three days before the papers were brought to me; I read it in the Galveston News. I know that the Legislature met last Winter and that they had an investigation growing out of the oil business, and that it lasted five or six weeks. I did not know until I came here yesterday that Mr. Pierce had been indicted; I heard it discussed here, that he had been tried here before; that's all I heard about it. I have heard some people say that they thought the Waters Pierce Oil Company was a trust, but I didn't hear much discussion of the subject. I did not hear them say they thought the company ought to be driven out of the State and prevented from doing business. I just heard them say what I have stated, as I was passing by and I didn't pay any attention to it, and didn't even know what the foundation of it was. I did not hear those people say the company was doing business in this State in violation of the law. I have been subscribing for the Galveston News for the last twenty-five or thirty years. I don't take any of the local papers. The Galveston News has contained a great deal about this matter the last few months, but I didn't pay any attention to it, because it didn't concern me.

468 Redirect examination:

I was sitting here in the room yesterday when Mr. John E. Shelton was testifying but could not hear what he said and did not understand it. If Mr. Shelton spoke to me with reference to this case some days ago, I don't remember anything about it.

CHARLES THIELE, for the State testified as follows:

My name is Charles Thiele, and I reside four miles North of Austin. The voting box out there is at my place and I am Chairman there. I have been Democratic Chairman there the last twelve years. I think I was summoned as a witness for the Waters Pierce Oil Company in this case. I agreed to hold an election at Thiele's Residence last January in the Bailey controversy, and the stationery was sent out there, but we didn't hold any, as nobody came. There was no interest taken on that issue that day at my place. I have not during

the last six months heard discussion with reference to that matter among the people of my community or here in Austin. I was at home at work and did not hear the speeches. I did not hear any discussion among the people while that campaign was going on nor while the investigation was going on in the Legislature. I took the "Statesman," and that is all I read. I heard the people discussing that question but very little. I did not hear it to any extent that I know of. I come to Austin about once a week, and always very late in the evening. I have some relatives here in the city. I heard very little discussion among my relatives and other people before the election last January. My relatives came to see us sometimes, and they are the only persons I expressed myself to. I told them that this
county was going to hold an election, that I would not object
469 to holding one, and if there was any truth in what I read in the "Statesman" and so forth, I though- they ought to hold one. When I came here yesterday it was my opinion that the Waters Pierce Oil Company could obtain a fair trial in this county, and when I went to dinner yesterday I stopped in a store up here and there were four or five men there; one was a drummer, who goes from house to house, and I put the question to them if they thought Travis County could produce twelve men as jurors to give an impartial verdict in this case and they almost unanimously answered that they though- so. My opinion is the same now as yesterday; I have not changed it. I do not know of any reason why the Waters Pierce Oil Company can not get a fair and impartial trial of this case in this county. If I were summoned as a juror in this case I think I could qualify and try this case fairly and impartially on both sides. I have no doubt on the subject. I don't know any of the facts in the case, and I would have to go accoraing to the testimony and the evidence. I have not heard the facts of this case discussed to amount to anything.

Recross-examination:

Those people I was talking to yesterday said they would feel sorry if this county could not produce twelve men who would give an impartial verdict in this case. I also asked them if they thought there — any prejudice in this county against the Waters Pierce Oil Company, and they said No, it didn't amount to anything—somebody would talk about it who had never heard any of the facts. My idea of a fair trial in this case is that twelve men can be found in the county who will say that they will give the defendant a fair and impartial trial. There might be a case come up where a fair trial
could not be had in this county, but it would be a sorrowful
470 thing. I think there certainly ought to be twelve good men among six thousand.

ROBERT WOLF, for the State, testified as follows:

I reside at Manor, and am Justice of the Peace down there. I have lived there eight years. I understand that I was summoned as a witness for the defendant here. During the last six months I have heard a general discussion concerning the Waters Pierce Oil Com-

pany. I have read a whole lot about it; I have read two or three different ways, though. From what I have heard and read, I am sure that the defendant can obtain a fair and impartial trial of this case in this county. It can receive a fair and impartial trial of this case in *can in* any other county in the State. If I were summoned as a juror in this case I could try it fairly and impartially on the facts.

I remember having a conversation recently with John E. Shelton concerning this case. I did not tell Mr. Shelton that the defendant could not obtain a fair trial of this case in this county. I had been down to Atlee and had come back and got on the noon train going to Manor and was sitting with some friends in the car, we had seats facing one another, and Mr. Shelton came in; he said, "You fellows are about to get in trouble up in Austin," and one of them said, "Well, no, not as long as we have got the Judge with us"; Mr. Shelton said, "You are the very Judge I want to see," and he called me back to the smoker and he asked me about the prohibition question, and I answered him; then he said something about Bailey, I don't know what, and he asked me, "What about this Bailey business?" I told him I didn't think much of it, it was so little thought of or so little interest taken in it after it was quashed, and
471 he said, "You know they have instituted suit against the Waters Pierce Oil Company and also against H. Clay Pierce." I said, "Yes, I have heard about it." He said, "They are trying to get a change of venue. Don't you think it will be a hard matter to get a jury in Travis County to indict them or give them a fair trial?" I said, "Well, it might be hard, but no harder than in any other county," as all the papers had been advertising and writing it up, and I told him that I believed that the Waters Pierce Oil Company could get a fair and impartial trial in Travis County; I told him it might be that they would have to summon a good many jurors, but that they could get a fair trial. I had no prejudice against the company personally.

Cross-examination:

I have lived in Travis County about eighteen years. I am twenty-eight years of age. I believe that we have enough conscientious men in this county to give the defendant a fair trial. I believe that with reference to any case, without reference to its publicity. I believe that conscientious men will do right if they take the oath as jurors. I don't believe that all men will do it. Now, in a murder or rape case, or something like that, I think there would be trouble in getting jurors, but not in a civil suit like this. I know that during the investigation in the Legislature this matter was discussed for a month or more and public speeches were made nearly every day in this county during the campaign. I know that a suit against the old Waters Pierce Oil Company was tried here some years ago and judgment was rendered against the company and it was put out of business. I also understand that it is charged that its coming back into the State was a fraud on the laws of the State, but it has not been
472 found guilty of it. I know that when this suit was filed it provoked a political contest in Travis county; I considered

it a political scheme. With reference to whether or not the newspapers have given more notice to this case than to any other case, civil or criminal, that has ever come under my observation in this county, I think the Burt murder case and others received about as much notice. Perhaps the newspapers have published a dozen times as much about this case as they did about the Burt case. I know that there are many counties that did not hold any election at all in regard to the Bailey controversy and I know that Travis county is the county where the Legislature meets and the investigation was had. I do not see why in some county other than Travis there would be less pre-judgment of the case than in this county. I do not believe the people here could say straight out that they have their minds made up as to the issues in this case. There were a good many circulars and pamphlets sent out during the Bailey campaign. I think a few people in this county have formed opinions growing out of the discussion of this matter.

Redirect examination:

The literature sent out over the county during that campaign and the legislative investigation related more especially to Mr. Bailey. The primary election held in this county last January called out a comparatively *like* vote. So far as I know very few people read the pamphlets that were circulated; I did not read them. I stated that I thought the Burt case and other cases that have been tried in this county had received as much notice as this case. I have not heard any of the facts of this case discussed by the people, only the re-admission of the Waters Pierce Oil Company to the State.

473 Recross-examination:

I have heard people say they thought its re-admission to the State was a fraud. The expressions I have heard regarding Senator Bailey related to his alleged connection with the Waters Pierce Oil Company and other things as well. The majority of the people believed that Senator Bailey had received money from the Waters Pierce Oil Company, and some of them claimed that he should not have taken it at all, being as he was drawing a salary from Texas. Others said he had no business working for the Waters Pierce Oil Company because it was accused of being a trust. Some said that Senator Bailey had no business working for them or receiving money from them and denying it and coming back and saying he had got it. As to whether or not anybody was defending the Waters-Pierce Oil Company, that was not discussed very much in my part of the country—Bailey was the one. The people have the idea that the Waters Pierce Oil Company is a trust, but they could not get up and swear that it is.

Redirect examination:

I think you can get plenty of good men in this county to try this case. The charges against Senator Bailey were numerous. His alleged connection with the Waters Pierce Oil Oompany was not the

only charge against him that was discussed. His services to public service corporations, the Security Oil Company, and his race horse farms and everything else were discussed.

Recross-examination:

I was under the impression that the filing of this suit was a result of the Bailey controversy. I was under the impression that the evidence brought out was what caused the suit to be instituted.

Redirect examination:

I heard something about the evidence of Mr. Pierce in Missouri before this suit was filed. The people generally were talking
474 about it.

NELSON HOUSER, for the State, testified as follows:

I live in Manor, in this county. I have lived right in Manor about a year and a half, and have lived in Travis County about thirty years. I have lived within about five miles of Manor and in Manor for twenty or thirty years. I am acquainted with the people in and about New Sweden Kimbro and Decker. During the past six months I have heard discussion of the Bailey and Waters Pierce Oil Company matter—principally in regard to Senator Bailey, and incidentally referring to the company. I have read about it in the newspapers, also. From what I have heard and read, I think the Waters Pierce Oil Company can obtain a fair and impartial trial in this county. If accepted as a juror in this case, I could qualify and give the defendant a fair and impartial trial. All I know in regard to the facts of this case is what I have read in the papers. As to whether or not I have an opinion that would prevent me from qualifying as a juror, I am not taking it so seriously that I could not discard any impression I have. I think some men could be obtained around Manor that would give a fair trial but some could not do so. I was summoned as a witness for the defense in this case.

Cross-examination:

I don't know why some of them would not qualify, only I have heard them talk that way. They said they would not be competent jurors in this case, as they have their minds made up, I suppose. I have my opinion about the case; it is that the Waters Pierce Oil Company is a trust, and if I went into the*y* jury-box I would do so with that opinion, though I am not taking it seriously. While I have not heard the facts of the case, from what I have heard my
475 opinion is that it came back into the State in defiance of the law and through a fraud. Nevertheless, I could give it a fair trial. I think there are other men of the same frame of mind in my community who could do the same. I heard that there was a judgment rendered against the old Waters Pierce Oil Company, but that it came back into the State afterwards, and that was claimed to be a fraud on the State. I suppose everything concerning that matter occurred in Travis County, though I don't really know. I think that, in my frame of mind, I could give the defendants a fair trial.

Redirect examination:

I have sat as a juror in a murder case. I had heard that the man had been killed, before being taken as a juror, but that fact did not affect my verdict. I would go into the jury box and try the case fairly, notwithstanding I have heard that this company was tried once before.

R. E. LEE, for the State, testified as follows:

I reside at Carl, out South of Austin, between Bluff Springs and Creedmoor. I have resided in that section of the county nearly twenty-four years. I know a great many of the people on the south side of the river in Travis County. I come to Austin almost every week, and sometimes twice a week. I buy groceries at Deen & Walling's principally and meet a great many farmers there from different sections. I have heard the Bailey and Waters Pierce matter talked of some, but not a great deal. In the fall I was engaged in gathering my crop, and in the Winter I was doing carpenter work. During the campaign that preceded the election held in January and during the investigation of Senator Bailey, I heard some discussion among the citizens with regard to it. We did not hold any
476 election at Carl in the Bailey controversy. As to the reason for not holding it, in the first place Mr. Barr and I were the judges of the election there, and he had moved out before that time and was not qualified to assist me in holding it. I asked my old clerks who has been holding elections for some years about holding the election, and they asked me whether there was any money in it, and I told them I wasn't sure, I couldn't promise them anything at all, and so they didn't come. I could not get anybody to serve. I left the papers and said, "If there is any one else that wants to hold the election they can get the papers." I think there are between thirty and forty voters at Carl. I have read the newspaper accounts of the Bailey controversy, and the Waters Pierce Oil Company was mentioned in that connection. I read the Austin Daily Statesman, the Daily Tribune and the Semi-Weekly Galveston News. From the newspaper articles I read and the discussions I heard among my neighbors and here in town, I think the defendant in this case can get a fair and impartial trial in Travis County. I think I could qualify as a juror and try the case fairly alike to both sides. I have no doubt about that, any more than I have in any case I ever set on. As to whether or not there is any feeling against the Waters Pierce Oil Company, I never heard the Waters Pierce Oil Company mentioned until three or four days ago. I mingle with my neighbors when I have the time to spare.

Cross-examination:

I think the Waters Pierce Oil Company is a trust. In regard to my opinion as to whether or not its admission into the State after the old company was excluded was a fraud upon the State, I would read one newspaper and it would convince me it was, and then pick

up another and read it and it would convince me it was not;
477 so I don't know. As to whether or not the Waters Pierce Oil Company is a trust, I have not heard that subject discussed until last Thursday, when I heard two men discuss it. From what they said, I think they regard it as a trust. As to the basis of the opposition to Senator Bailey in my community, the people consider that Mr. Bailey is our Senator and that he had not represented the people as he should have done. They believed then, and believe it yet, that he had been working for trusts and monopolies. They believed that the Waters Pierce Oil Company was one of the trusts and monopolies for which he had been working. I think I could qualify as a juror in this case and try it impartially. If the testimony of Mr. H. C. Pierce and other officers of the company were introduced in evidence, I believe I could weigh it as impartially as if I didn't have this opinion. I do not believe I would have any more difficulty in weighing it impartially than if I didn't have the opinion. I would not take the oath as a juror if I thought I could not try the case impartially. I can not speak for any one *by* myself on the question of whether or not I believe that any honest and conscientious man can lay aside any prejudice or prejudgment of the case and try it according to the law and the evidence; I think I can do it, and I have done such things. Where I believed men to be guilty before I went into the jury box, I would acquit where the evidence was such that I could not do other than that. I believed they were guilty, but had no evidence to back it up. I would take the evidence and the charge and return a verdict that I believed to be in accordance with the law and the rulings of the court. I have not heard anybody in my neighborhood speak a good word for the Waters Pierce Oil Company; I have not heard it discussed at all. I did hear it discussed in connection with the Bailey matter, but they
were not blaming the trust for getting Bailey to get them
478 back here. They were opposing Mr. Bailey because he had not been true to us as our Senator. The reason they thought he had not been true was because he had been working for the Waters Pierce Oil Company, and that it was a trust.

Redirect examination:

Senator Bailey just had the people wound up in a ball and rolling them ahead of him; I know he had me, anything he said was all right. I was summoned here as a witness for the defense.

THOMAS CARPENTER, for the State, testified as follows:

I live at Manchaca, in Travis County. I have lived there twenty-four years. I am a cotton-buyer and ginner. I am well acquainted with the people living in the Manchaca neighborhood. I know some of the people at Oak Hill, Roberts and Bluff Springs. I was summoned here as a witness for the defense. I was in the county on the day of the election held in January, and I was here during the Bailey Investigation in the Legislature. I read the newspaper accounts of those occurrences. I have heard discussion concerning the Bailey controversy among the people around Manchaca and the neighbor-

ing boxes and in the city of Austin; it was generally discussed at the time stated. From what I have read and heard, I think the Waters Pierce Oil Company can obtain a fair and impartial trial of this case in this county. I feel sure that fair and impartial jurors to try this case can be secured in and around Manchaca. I could qualify as a juror and try the case fairly to both sides on the facts and the law as charged by the court.

479 Cross-examination:

I do not believe that the Waters Pierce Oil Company is a trust, operating in Texas in violation of the law. I do not believe that it was admitted into Texas by fraud six years ago. I voted for Mr. Bailey in the election last January. From what I have heard, the majority of the people in my precinct consider that the Waters Pierce Oil Company is a trust. I do not know that they think it is operating here in violation of the law, but they think it is a corporation that has something to do with the regulation of the prices of oil. They think it is a trust, and they think any trust is in violation of the law. I don't know that the majority of them also say that its admission into the State of Texas six years ago after the old company was ousted was accomplished by fraud.

I know the people living around Bluff Springs and Roberts and Oak Hill. I do not see very frequently the people that live around Roberts and Oak Hill. From what I have heard, I think the majority of the people out there believe the Waters Pierce Oil Company is a trust. I think the majority of the reading public everywhere believes it is a trust. I heard Mr. Summerrow out at Manchaca undertake to defend the Waters Pierce Oil Company. I think he is the only one I have heard say anything in favor of it. In expressing the opinion that the defendant can secure a fair and impartial trial of this case in this county, I proceed on the idea that any honest, conscientious man when he is sworn as a juror should be able to lay aside any preconceived idea he has with reference to the case and try it according to the law and the evidence.

Redirect examination:

I do not undertake to say to what extent the people have opinions in this matter. As to whether or not a man can lay
480 aside his prejudice or preconceived views of a matter would depend on the extent to which his mind is made up. I base my statement on the idea that the people's minds are not so made up that they could not lay aside their opinions.

JOHN PATTERSON, for the State, testified as follows:

My name is John Patterson, and I am in the fraternal life insurance at present. I have been a school teacher in this county for twelve years. I reside at Manchaca. Manchaca has been my home all the time, although I would be away all the time except in the Summer; I called it my home all the time. I am well acquainted with the people in that community. I know the people at Bluff Springs as well as those at Manchaca; at Oatmanville and at Roberts

I know practically half the people. I was in the county during the Bailey campaign and at the time of the primary election, and I was here during the Bailey Investigating committee's work in the Legislature. I read the newspapers every day and almost everything else I could get hold of, and heard Senator Bailey make a speech. I heard discussions among the people of Manchaca and Roberts and that section at that time. From what I heard and read, I believe the Waters Pierce Oil Company can obtain a fair and impartial trial in this county. As far as any prejudice is concerned, I think I could qualify as a juror and try this case on the facts and the law as charged by the court. I have no prejudice, in the sense that I have no desire to see one side or the other win in the case, and I have no feeling in the case. If I have any views concerning the matter, I can set them aside. I was summoned as a witness for the defense in this case.

481 Cross-examination:

I think, from my general reading, that the Waters Pierce Oil Company is a part of the Standard Oil Company, and think it is a part of the trust. I think it would necessarily follow that the company has been violating the laws of Texas against combinations, trusts and conspiracies in restraint of trade, and I think its admission into the State six years ago was accomplished by fraud. I don't think that all the people out there believe that way. There are some that do not believe the Waters Pierce Oil Company is a trust—or, at least, they have talked so. I have heard such expressions, and have heard others say they didn't know anything about it at all. In the election last January there were sixteen votes against and fifteen for Mr. Bailey at Manchaca. I was an anti-Bailey man. I did not distribute anti-Bailey literature out there. I was opposed to Mr. Bailey for several reasons: First, I did not think he was a good party man before the nomination; I would not have opposed him after the nomination, on that ground. Second, I thought he had misrepresented things to the people of Texas. Third, I did not think it was proper for a United States Senator to *ge* getting large sums of money from the monied interests of the country at the same time he was drawing salary from the State of Texas or the United States government to represent Texas; and lastly and my most earnest reason for it was on account of his language in the city of Austin. I never took any active interest until after his speech at the skating-rink. I used my influence to defeat him, and impressed i*n* on the minds of my friends as far as I could. I heard expressions here in Austin along the same lines. I have not heard any expressions that I can recall since the Bailey election. If I am not mistaken,
482 I heard Judge Penn say we didn't know anything about it—didn't know it was a trust. I think I heard Judge Penn discuss the Bailey matter downstairs on the street. I could not say who was present. If I heard him say anything it was nothing more than the Waters Pierce Oil Company had not been convicted of being a trust, and that we did not know that it was a trust. I have heard others make about the same statement. I do not think a man

would be a competent juror who had said the company was a trust and that it had been fraudulently admitted into the State. I think I could lay aside my prejudice and try the case on the law and the evidence. I have no greater ability to lay aside my opinions than most people.

Redirect examination:

I do not entertain any violent opinions on this subject at all. I went around Manchaca talking against Senator Bailey after I heard him at the skating-rink, but did not take any active interest against the Waters Pierce Oil Company. It was Senator Bailey that we had up and discussed.

A. D. DYE for the State, testified as follows:

I live out at Creedmore. I am acquainted with Calvin Hughes and W. R. Davis. I have lived out close to Creedmore about twenty years. I am very well acquainted with the people in that section. During the past six months I have heard discussion of the Bailey matter, in connection with the Waters Pierce Oil Company. The discussion was pretty general in that part of the country. I go up to the store often, and there was a good deal of discussion there. From those discussions and any newspaper reports I may have seen, I think the Waters Pierce Oil Company can obtain a fair and impartial trial in this county. I could qualify as a juror and try the case impartially to both sides under the facts and the charge
483 of the Court. I have no opinion concerning the matter that would interfere with my duty as a juror. I was summoned here as a witness for the defendant.

Cross-examination:

In the discussion I heard out there the matter was discussed pretty generally. The people I heard discuss the matter expressed the opinion that the Waters Pierce Oil Company is a member of a trust; it is the general belief in the community that it is. I have also heard them talking that the admission of the present company into the State six years ago was accomplished by fraud, after the old company was ousted from the State and the new company organized. From what I have heard about it, I believe that the Waters Pierce Oil Company is a member of a trust. I guess I also believe that the organization of the present company and obtaining its permit to do Texas in Texas was accomplished by fraud on the State. I think I could lay aside this preconceived idea and try the case according to the law and the evidence; I would try to do it. I think I could take the testimony of H. C. Pierce and other officers of the company and give it the same weight that I would have been able to give it if I had not heard all of this discussion and had not formed these preconceived ideas. I think it would be more difficult for me to give credence to their testimony than it would have been otherwise. I guess that would be the natural effect on any man that would go into the jury-box with an opinion. My opinion that the defendant can get a fair and impartial trial is predicated on the idea that an hon-

est conscientious man ought to be able to lay aside his opinion when he is sworn as a juror and try a case according to the law and the evidence.

484 Redirect examination:

I don't know anything about the facts the State expects to prove. I have no opinion that would interfere with my duties as a juror and prevent me from rendering a fair and impartial verdict. My opinion would not influence me in rendering a verdict after I heard the evidence.

Recross-examination:

The Austin Statesman and Tribune circulate out in my part of the county, and I believe the Houston Chronicle does, too. The testimony taken before the Bailey Investigating committee as published in the Statesman and Tribune and other newspapers was generally read and commented upon in the community. I saw copies of the Houston Chronicle or other papers in that community purporting to contain photographic copies of vouchers, letters, etc., in the Bailey Investigating Committee. Those papers were circulated generally in the community.

Redirect examination:

I don't remember as to whether or not the Fort Worth Record and Houston Post circulated around there. I saw the Houston Post occasionally.

485 *Plaintiff's Testimony.*

C. C. BAKER, a witness for the plaintiff, being duly sworn, testified as follows:

I live fourteen miles northeast of Austin; about five miles from Manor. I might say that I have a general acquaintance in that neighborhood; I am acquainted with nearly every man in that part of the country. I have heard very little expression in regard to the case of the State of Texas *vs.* Waters Pierce Oil Company. I have read of it in the papers, and have heard some comment, but not an extensive comment. I do not know of any reason that exists in this county why the defendant could not get a fair and impartial trial here, any more than any other portion of the State where the people read and are posted in regard to the character of the company. That would be my idea about it. I think they can get as fair a trial in Travis County as they could in any other well posted county in the state, that is, where the people read and keep posted in regard to trusts and where there is a general sentiment against trusts among the common people. I know of no special reason why a fair trial could not be had in this county; just the general sentiment against corporations. I think the same conditions exist in other parts of the State and throughout the country. I don't know that I know of any prejudice that exists against this corporation that does not exist

against the others. It might be possible that there is more prejudice against the Waters Pierce Oil Company in Travis County and all other counties in the State than any other trust. I believe the Waters Pierce Oil Company can secure a fair and impartial trial in this county, but it would depend upon the jury selected, just as in any other case. If a jury of honest fair-minded men is selected a fair trial could be had. I don't think its being the Waters Pierce Company would prevent its getting a fair trial. I believe I
486 was summoned as a witness for the defendant in this case.

Cross-examination:

I don't know that I could positively answer the question that I think the Waters Pierce Oil Company is guilty in this case. The impression made on my mind from reading the papers and hearing the matter discussed generally by intelligent people is that they were re-instated in a fraudulent manner; that seems to be the general impression, but I don't know it to be a fact. I have not heard anybody express a contrary opinion, but I have heard it expressed differently through the papers. Thinking the matter over I believe I have heard people express a contrary opinion, but I could not be positive as to how many. I explain the matter in this way; There is a Bailey feature in this case, and in discussing the Bailey feature in connection with the Waters Pierce Oil Company, there are a great many people in my community who are especially friendly to the Bailey feature in the suit of the Waters Pierce Oil Company and they question everything that is an unfriendly opinion as expressed against Mr. Bailey. I don't know that I have heard from a good many Bailey men that the admission of the Waters Pierce Oil Company into Texas was a fraud and that Mr. Pierce imposed on Mr. Bailey in inducing him to get the company in here.

I was an ardent opponent of Mr. Bailey in this last campaign. I don't think that a fair trial in this case would inevitably result in a conviction of the Waters Pierce Oil Company it would depend upon the evidence. I do not believe it is guilty. I would have to see more positive evidence. Mine is all second hand. If I were on the jury in this case I would not be inclined to look askance at the testimony of every one connected with the Waters Pierce Oil Company. I believe I could accept their testimony as fairly as I could others.

I have said that I believe most of the people consider the
487 Waters Pierce Oil Company guilty. That was not the basis of the opposition to Mr. Bailey; it was his connection with the company. They believe and I believe that he got it back into the State.

W. R. Davis, a witness for the plaintiff, being duly sworn, testified as follows:—

I live at Creedmoor; that is the same voting box at which Mr. Calvin Hughes lives. I have lived there some twelve or fourteen years. I am farming out there. I think I am tolerably well acquainted with the people around Creedmoor and south of the river generally. I think I am a pretty good mixer. In regard to the

sentiment at Creedmoor concerning the Waters Pierce Oil Company and its getting a fair trial in this county, I will say that if you cut out the Bailey part I don't think I have heard the company discussed. I have heard it said that it is a trust, and have heard that it is not a trust. I have heard both sides. Leaving out the Bailey issue I don't think I have heard anything south of the river to indicate prejudice against the Waters Pierce Oil Company.

I don't know whether I was called as a witness for the defendant. I was called over the 'phone, and I don't know by whom. Counsel for defendant said a moment ago they were willing to excuse me.

Leaving out the Bailey issue, I think the Waters Pierce Oil Company can get a fair trial in this county.

Cross-examination:

I have heard some few people express the opinion that the Waters Pierce Oil Company is a trust, but I have not heard many express their opinion about the Waters Pierce Oil Company at all, only in regard to this Bailey matter. I have heard Mr. Bailey cussed and discussed. It was about a standoff on that point. Some cussed him because they thought he had got the Waters Pierce Oil Com-
488 pany back into the State after they had been put out, and others cussed because they thought he was a traitor to the party and the people; that he had lied to them; that we had him employed as Congressman and United States Senator, and we thought that he would represent us, but instead of that he represented the trusts. I think the people meant this Waters Pierce Oil Company and other trusts; I can't think of the names. Among the people I heard express themselves, the great majority think the Waters Pierce Oil Company is a trust. A majority also thought that its admission into the State after the old company was dismissed, was a fraud.

In the last election I voted at Creedmoor. I voted against Mr. Bailey.

I don't know what I think about the Waters Pierce Oil Company. I am pretty well satisfied with the Waters Pierce Oil Company. I am getting oil about as cheap, and have no kick coming against them. I reckon they are a trust, and I believe it was fraudulently re-admitted.

The people in my community read a great deal. I read most of the testimony in the Bailey Investigation. I think most of the people out there read it. I have seen something purporting to be from Mr. Lightfoot about valuable evidence he had secured, but don't remember what it was. I couldn't say as to whether or not the people generally read it. I may have *a* read a letter from the Attorney General to Senator Bailey, written about the first of December, but I couldn't say for certain. Most of the people around Creedmoor and south of the river take one or the other of the local papers, the Statesman or the Tribune. I do not know whether or not the Houston Chronicle is taken in that part of the country.

Redirect examination:

I don't think I have heard any discussion among the people about the issues in this case, that is, the facts in this particular case.

489 The plaintiff here introduced in evidence a written agreement on file among the papers in this case, and signed by counsel for plaintiff and defendant, by which it was agreed that it was a fact that the Standard Oil Company of New Jersey had, since about September 20th, 1900, owned 2747 shares of the capital stock of the Waters Pierce Oil Company, and that from said date auditors of said Standard Oil Company had, from time to time, audited the books of the Waters Pierce Oil Company, and that on the trial of this case the said agreement might be read in evidence as an admission by defendant of said facts, to the introduction of which agreement in evidence on this hearing defendant objected on the ground that the same was irrelevant and immaterial to any issue before the Court on the hearing of said application for a change of venue, but which objection was overruled by the court and the said agreement was admitted in evidence, and to which action and ruling of the Court in so admitting said agreement in evidence the defendant then and there in open Court excepted.

And be it further remembered, that upon the conclusion of the evidence on the hearing of said application for change of venue in this court, the court, after hearing the argument of counsel thereon, overruled defendant's said application for a change of venue in this cause, and refused to grant to defendant a change of venue in this cause, and to which action and ruling of the Court, in so refusing said application for a change of venue and in so refusing to grant to defendant a change of venue in this cause, defendant then and there in open court excepted and here and now tenders this, its bill of exception to such action and ruling of the court and prays that the same be allowed and ordered filed and made a part of the record in this cause.

490 CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Defendant, Waters-Pierce Oil Company.

The foregoing bill of exceptions was tendered and delivered to me on the 29 day of June, A. D. 1907, and is hereby approved, ordered filed and made a part of the record in this cause, with the statement inserted, after filing, by consent of counsel for both parties, that 23 out of the first 28 talesmen examined in the selection of a jury in this cause testified that they had no opinions on the issues involved in the cause, and were accepted without objection by either party. One of the other five had no such opinion thereon as would disqualify him, and one of the remaining four had no opinion thereon but was unable because of physical disability to read and write.

V. L. BROOKS,
Judge 26th Judicial District of Texas.

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Defendant's Bill of Exceptions No. 7. Filed June 29, 1907. D. J. Pickle, Clerk.

491 *Charge of Court.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

Cause Pending in the District Court of Travis County, Texas, for the 26th Judicial District, May Term, A. D. 1907.

GENTLEMEN OF THE JURY:

In this case the State of Texas, as plaintiff, has sued the Waters Pierce Oil Company, a private corporation chartered under the laws of the State of Missouri, and doing business in Texas by virtue of a permit issued to it by the State of Texas on May 31, 1900, as defendant, to cancel said permit, and to recover penalties for violations of the anti-trust laws of Texas which the State alleges the defendant has committed on each and every day from May 31, 1900, to April 29, 1907.

The State alleges that on or about January 1, 1870, John D. Rockefeller, John D. Archbold, H. H. Rogers, Henry M. Flagler, and a number of other persons conceived the scheme of monopolizing and controlling the business of refining, transporting, and selling petroleum and the products thereof throughout the United States, including the State of Texas, and that said persons to that end and for that purpose entered into a conspiracy among themselves and with other individuals and corporations, including the defendant corporation, which conspiracy the State alleges continued in force and effect from the date of its formation until the date of the filing of the State's Second Amended Petition in this case,

492 and the State further alleges that in pursuance of said alleged conspiracy the defendant has done various acts and entered into various agreements which constitute violations of the anti-trust laws of Texas.

The State further alleges that the defendant's predecessor, the Waters Pierce Oil Company incorporated in 1878, on or about the 5th day of October, 1894, entered into a contract with the Eagle Refining Company, A. W. Clem, and certain other individuals named in its petition, by the terms of which defendant acquired the property of said Eagle Refining Company situated in the City of Dallas, Texas, and the right to operate its business under the name of the said Eagle Refining Company. It further alleges that the defendant did subsequent to May 31, 1900, operate said Eagle Refining Company and maintain the plant thereof at Dallas, as an

apparently competing concern for various purposes prohibited by the anti-trust laws.

The State further alleges that in the year 1896, the defendant's said predecessor bought out the business of the Texas Oil and Gasoline Company and of one Roy Campbell, who were at that time doing business in the City of San Antonio, Texas, and elsewhere, and entered into contracts and agreements with the said Texas Oil and Gasoline Company and Roy Campbell whereby said Texas Oil and Gasoline Company was thereafter to be operated under said name by defendant as an apparently competing concern with defendant at San Antonio, in the sale of the products of petroleum. It further alleges that said Texas Oil and Gasoline Company was operated by defendant as a concern apparently competing with it at San Antonio subsequent to May 31, 1900, for various purposes in violation of the anti-trust laws of the State. For full particulars of the State's allegations you are referred to its Second Amended Original Petition.

The defendant denies all and singular the allegations of the State, and in addition to various other special defenses, pleads
493 specially that, if it has entered into any of the agreements or committed any of the acts alleged by the State, none of same constitute violations of the anti-trust laws of Texas because said agreements were made and said acts done (if at all) solely with reference to subjects of interstate commerce. For full particulars of defendant's allegations, you are referred to its 3rd Amended Original Answer.

As the Law of the case you are instructed as follows, viz:

I. The burden of proof rests upon the State to establish the affirmative of the issues which will hereafter be submitted in this charge for your consideration by a preponderance of the evidence, and you will find in favor of the defendant on each issue so submitted for your consideration, except such issue or issues, if any, as you find that the State has established by a preponderance of the evidence, and you will return a general verdict for the defendant, unless you find that the State has established by a preponderance of the evidence some combination or combinations of facts which will entitle it to recover under the Law as it is given you in charge by the Court.

II. The statute known as the anti-trust law of 1899 was in force on May 31, 1900, and thereafter remained continuously in force until March 31, 1903.

For the purposes of this charge you are instructed that this Act made it unlawful for any corporation transacting or conducting any kind of business in this State to enter into, or become a party to, any agreement, or understanding with any other corporation or individual to fix or regulate the price in Texas of any article of manufacture or merchandise or to control or limit in Texas the trade in any article of manufacture or merchandise.

494 You are further instructed that said statute also made it unlawful for any corporation transacting or conducting any kind of business in this State to bring about or permit any union

or combination of its capital, property, trade or acts with the capital, property, trade or acts of any other person or corporation whereby the price in Texas of any article of manufacture or merchandise would be fixed or sought to be fixed, regulated or sought to be regulated; or whereby the price in Texas of any article of manufacture or merchandise would be reasonably calculated to be fixed or regulated, or whereby the trade in such article of manufacture or merchandise in Texas would be sought to be controlled or limited, or would be reasonably calculated to be controlled or limited.

The statute known as the anti-trust Law of 1903, became effective on March 31, 1903, and has since continued in force.

For the purposes of this charge you are instructed that this statute defines a trust to be a combination of capital, skill, or acts, by two or more persons, firms, corporations, or associations of persons, or either two or more of them, for either, any, or all, of the following purposes, viz:

1. To create or which may tend to create or carry out restrictions in trade or commerce in Texas, or to create or carry out restrictions in the free pursuit in Texas of any business authorized or permitted by the laws of this State.

2. To fix, maintain, or increase the price of merchandise in Texas.

3. To prevent or lessen competition in Texas in the sale of merchandise.

4. To abstain from engaging in business or in the sale of merchandise in Texas, or any portion thereof.

Said statute of 1903, further defines a monopoly to be a
495 combination or consolidation of two or more corporations when effected in any of the following methods, viz:

1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create, a trust as above defined.

2. When any corporation acquires the shares or certificates of stock, franchise or other rights, or the physical properties or any part thereof of any other corporation or corporations for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise.

III. Oil, all other products of petroleum, and goods, wares or merchandise of any character which the defendant or its agents may have purchased or acquired in any manner outside the State of Texas and caused to be transported to its agents or others within the State, are the subjects of interstate commerce when they enter this State, and so remain until such commodities are removed from the original tanks, vessels, or other packages in which they are imported into the State, and become mixed with the common mass of property of similar character in the State. The anti-trust laws of Texas have no reference to agreements or pools or arrangements of any character concerning subjects of interstate commerce, and no

agreement, pool, or other arrangement, if any, which the defendant may have entered into with reference to the sale of any subject of interstate commerce can be considered by you as violating any anti-trust law of Texas. But neither oil purchased by the defendant from the Corsicana Refinery or elsewhere in Texas, nor other merchandise purchased by defendant at points in Texas, nor such oil or other merchandise purchased by defendant at points out-
496 side the State and transported into the State and removed from the original packages or vessels in which it was brought into the State and mingled with other property of similar character in the State, is the subject of interstate commerce, but on the contrary is the subject of local commerce, and any agreement or pool or arrangement entered into by defendant with reference to such property or the sale thereof, if any such there were, would be unlawful, if in violation of the anti-trust Laws of this State.

IV. A corporation such as defendant can only act through its agents and servants, but such a corporation is not liable for all of the acts of its agents or servants. It is liable, however, for the acts done in the scope of their employment and agency, and is also liable for the acts of its agents which it has authorized such agents to perform, and it is also liable for the unauthorized acts of its agents, if any, which have been knowingly acquiesced in or ratified by the governing body of said corporation.

V. Much evidence has been introduced before you relating to the doings and agreements of the agents of corporations other than defendant, and to the doings and agreements of defendant's predecessor's agents prior to June 1st, 1900, and to the doings and agreements of defendant's agents, and the agents of other corporations, outside the State of Texas, and to the doings and agreements of individuals both prior and subsequent to June 1, 1900, and both outside and within the State of Texas. None of this evidence is competent or can be considered by you against the defendant, except within the limitations and for the purposes hereinafter stated, viz:

If you find from a preponderance of the other evidence in the case, independent of all declarations or statements made by
497 any person or persons, except their evidence given while testifying by deposition or personally as witnesses on the trial of this case, that on June 1, 1900, there was formed or existed an agreement between the governing officers of defendant and the governing officers of any of the other corporations alleged in the State's petition to be co-conspirators with defendant relating to the management of defendant's business, or between the governing officers of defendant and any of the individuals alleged in the State's petition to be co-conspirators with defendant relating to the management of defendant's business, then you may consider for what, if anything, you think it worth, such acts or declarations of all the parties to said agreemnt, if any, and such acts and declarations of their authorized agents, if any, as were done or made, as the case may be, during the existence of said agreement, if any, and in furtherance of its execution, for the purpose of determining the

character of said agreement, and whether or not it contemplated a violation by defendant of the anti-trust laws of Texas.

You may further consider for what, if anything, you think it worth as tending to show or explain the course of defendant's dealings in Texas, said evidence, if any, of what it did through its duly appointed and authorized agents, if any, outside the State,

None of said evidence can be considered by you against the defendant for any other purpose whatsoever, and none of it can be so considered by you against the defendant for said purposes, except such of it, if any, as you think proper to be considered when tested by the rules above stated relating to its competency.

VI. No agreement made by the defendant outside the State of Texas, to violate the anti-trust laws of Texas, if any such there were, can be made the basis for forfeiting its permit to do business
498 in Texas, or for imposing penalties upon it, unless such agreement was executed or attempted to be executed in Texas by the duly authorized agents of defendant; but inasmuch as the undisputed evidence in the case shows that the defendant has continuously maintained its agents in this State and prosecuted its business therein since May 31, 1900, you will be authorized to convict it of violating the anti-trust laws of Texas, if you find from a preponderance of the evidence in favor of the State on the issues submitted for your consideration in paragraphs VII, VIII, IX, X, or XI, of this charge.

VII. If you find from a preponderance of the evidence that the defendant company, acting through its duly appointed and authorized agents, entered into or became a party to an agreement or understanding with the Standard Oil Company of New Jersey, on June 1, 1900, to fix or regulate the price in Texas of oil refined from petroleum, and if you further find from a preponderance of the evidence that the defendant company, remained or continued to be a party to said agreement or understanding, if any, and persisted in carrying same out in Texas, if any, through its duly authorized agents on June 1, 1900, or on any other date or dates subsequent to June 1, 1900, and prior to March 31, 1903, and if you further find from a preponderance of the evidence that the oil with reference to which said agreement or understanding, if any, was so made and carried out, was the subject of local as distinguished from interstate commerce, you will return a verdict for the State, and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph seven of the Court's charge. You are instructed in this connection that if you find in favor of the State on the issues above submitted for your consideration in this paragraph of the charge, each day embraced between May 31, 1900,
and March 31, 1903, during which the defendant remained
499 a party to the agreement or understanding herein mentioned, if there were any such agreement or understanding, and if it remained a party to same on any of said days, would constitute a separate and distinct violation of the anti-trust laws of Texas.

If you do not find from a preponderance of the evidence that the defendant was on June 1, 1900, or on some date subsequent

thereto and prior to March 31, 1903, through the action of its duly appointed and authorized agents, a party to an agreement or understanding with the Standard Oil Company of New Jersey to fix or regulate the price in Texas of oil refined from petroleum, and if you do not further find from a preponderance of the evidence that the oil with reference to which defendant entered into said agreement or understanding, if any such there were, was the subject of local as distinguished from interstate commerce, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph seven of the Court's charge.

VIII. If you find from a preponderance of the evidence that on June 1, 1900, or on any date subsequent thereto and prior to March 31, 1903, the defendant acting through its duly appointed and authorized agents, had brought about or permitted any combination or union of its capital with the capital of the Standard Oil Company of New Jersey, whereby the price in Texas of oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or whereby the price in Texas of such oil would be reasonably calculated to be fixed or regulated, or whereby the trade in such oil in Texas was sought to be controlled or limited, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in
500 paragraph eight of the Court's charge. In this connection you are instructed that if the defendant became a party to a pool of the character mentioned in this paragraph of the charge, each day between May 31, 1900, and March 31, 1903, that it remained a party to such pool, if there were any such days, would constitute a separate violation of the anti-trust laws of Texas. If you do not find from a preponderance of the evidence that on June 1, 1900, or that on some date subsequent thereto and prior to March 31, 1903, the defendant acting through its duly appointed and authorized agents had brought about or permitted a combination or union of its capital with the capital of the Standard Oil Company of New Jersey, and if you do not further find from a preponderance of the evidence that by said combination or union, if such there were, the price in Texas of oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or that thereby the price in Texas of such oil was reasonably calculated to be fixed or regulated, or that thereby the trade in such oil in Texas was sought to be controlled or limited or would be reasonably calculated to be controlled or limited, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph eight of the Court's charge.

IX. If you find from a preponderance of the evidence that the defendant acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas,

restrictions in the free pursuit in this State of the business of selling oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, or to fix,
501 maintain, or increase the price of such oil in Texas, or to prevent or lessen competition in Texas in the sale of such oil, and that the defendant remained or was a party to and acted under such combination, if such there were, on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, you will return a verdict for the State, and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph nine of the Court's charge. In this connection you are instructed that if the defendant became a party to a trust of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29, 1907, that it remained a party to and acted under such trust, if there were any such days, would constitute a separate violation of the anti-trust laws of Texas.

If you do not find from a preponderance of the evidence that the defendant acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas or which tended to create or carry out in Texas restrictions in the free pursuit in this State of the business of selling said character and kind of oil, or to fix, maintain, or increase the price of such oil in Texas, or to prevent or lessen competition in Texas, in the sale of such oil, and that the defendant remained or was a party to, and acted under, such combination, if such there were subsequent to March 30, 1903, and prior to April 30, 1907, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph nine of the Court's charge.

X. If you find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the
502 same management or control on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, and that they were placed under such common management or control, if any, by their respectively authorized officers, under such circumstances, that such common management or control, if such there were, created or tended to create or carry out restrictions in the sale in Texas of oil of the kind and character mentioned in the last preceding paragraph of this charge, or to fix, maintain, or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph ten of the Court's charge. In this connection you are instructed that if the defendant entered into a monopoly of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29, 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas.

If you do not find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on some date subsequent thereto and prior to April 29, 1907, and that they were brought under such common management or control, if any, by their respectively authorized officers under such circumstances that such common management or control, if such there were, created or tended to create or carry out restrictions in the sale in Texas of such oil, or to fix, maintain, or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in
503 paragraph ten of the Court's charge.

XI. If you find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation and thereby effected a combination of said two corporations, and if you further find from a preponderance of the evidence that said stock was acquired and combination effected, if any, with the purpose and intention on part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of the character and kind of oil above mentioned, or that the effect of said combination, if such there were, tended to affect or lessen the competition in the sale in Texas of said oil, you will return a verdict for the State and say by your verdict, we the jury find in favor of the State on the issues submitted for our consideration in paragraph eleven of the Court's charge. In this connection you are instructed that if the defendant entered into a monopoly of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29, 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas.

If you do not find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31, 1903, or on some date subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation, and if you do not further find from a preponderance of the evidence that said stock was acquired and combination effected, if it were at all, with the purpose and intention on part of the managing officers and directors of said Standard Oil Company of New
504 Jersey of preventing or lessening the competition in the sale in Texas of said character and kind of oil, or that the effect of said combination, if such there were, tended to affect or lessen the competition in the sale in Texas of said oil, you will say by your verdict, we the jury find in defendant's favor on the issues submitted for our consideration in paragraph eleven of the Court's charge.

XII. The evidence introduced before you does not show with

sufficient definiteness that the defendant has since May 31, 1900, acted under or persisted in the performance of either the contract with Clem and the Eagle Refining Company and others, or the contract with Roy Campbell and the Texas Oil and Gasoline Company, in such manner as to violate the anti-trust laws of 1899 or 1903. You are therefore instructed to find in defendant's favor on the issues pleaded by the State with reference to said contracts.

XIII. Evidence has been introduced before you tending to show that the defendant has given rebates and discounts in the course of its dealings; evidence has also been introduced before you tending to show that defendant has made contracts and entered into understandings other than those which have been submitted for your consideration in paragraphs seven to eleven, inclusive, of this charge. Evidence has also been introduced before you tending to show the general course of dealings of defendant in Texas and elsewhere, including some of its business methods in meeting competition.

You are instructed that none of this evidence shows or tends to show any violation of the anti-trust laws of Texas, unless it tends in some degree to establish some one or more of the issues submitted for your consideration in the last above mentioned paragraphs of this charge; and you are therefore instructed to
505 acquit the defendant and return a general verdict for it,— notwithstanding any and all of said evidence, unless you find in favor of the State on the issues submitted for your consideration in some one or more of said paragraphs of the charge.

XIV. If you convict the defendant under the foregoing instructions of any violation or violations of the anti-trust law of 1899, you will specify in your verdict the date or days for which it is convicted of having violated said law, and will further specify in your verdict that for said violation or violations, if any, you find, that its permit to do business in Texas shall be forfeited, and the amount of money which shall be adjudged against it as penalties for said violations, if any. In fixing the penalties, if any, which you assess against the defendant for any violations of which you may convict it, of the anti-trust law of 1899, you will fix same at not less than Two Hundred Dollars or more than Five Thousand Dollars per day for each day that you find it has so violated the law. If you convict the defendant of any violations of the anti-trust law of 1903, you will specify in your verdict the date or days for which it is so convicted, and further specify therein that as a result of said conviction, its permit to do business in Texas shall be forfeited, and the sum of money that shall be adjudged against it as a penalty for such violation, fixing said sum at Fifty Dollars per day for each and every day that you convict it of having violated said law.

XV. In order to aid you in preparing your verdict in proper form, when you have reach- same, the following forms of verdicts are submitted for your consideration.

1. If you find in favor of the State on all of the issues submitted

to you and for the entire time for which penalties are claimed
506 by the State against the defendant in its petition, you will say: "We the jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for the penalties at —— Dollars; and we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty-eight days, and fix the penalties at Seventy-four Thousand Four Hundred Dollars. We further find that the permit of the defendant to do business in the State of Texas should be canceled. We find for defendant upon all issues made by the pleadings and not submitted in the charge of the Court."

2. If you find in favor of the State on some of the issues submitted for your consideration relating to the alleged violations of the anti-trust law of 1899, and in favor of the State with reference to some of the alleged violations of the anti-trust law of 1903, you may use the following form of verdict:

We the jury find in favor of the State on the issues submitted for our consideration in the following paragraphs of the Court's charge: ——. We further find that the defendant violated the anti-trust laws of Texas on the following days embraced between May 31, 1900, and March 31, 1903: ——. We further find that on account of said violations, the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the amount of —— Dollars. We further find that the defendant violated the anti-trust laws of 1903, on the following days embraced between the 30th day of March, 1903, and the 29th day of April, 1907: ——. We further find that
507 on account of said violations the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the amount of —— Dollars. On all other issues raised by the pleadings, we find in favor of the defendant.

3. If you find in favor of the State with reference to some or all of the alleged violations of the anti-trust law of 1899 submitted for your consideration, and if you find in favor of the defendant on other of said alleged violations, and if you find in favor of the defendant on the issue of all of the alleged violations of the anti-trust law of 1903, you may use the following form of verdict:

We, the jury find in favor of the State on the issues submitted for our consideration in the following paragraphs of the Court's charge: ——. We further find that the defendant has violated the anti-trust laws of Texas on each of the following days embraced between May 31, 1900, and March 31, 1903: ——. We further find that because of said violations the permit of the defendant to do business in Texas should be forfeited, and penalties should be imposed upon it in the amount of —— Dollars. We further find in defendant's favor on all alleged violations of the anti-trust laws of 1903, and on all other issues made by the pleadings.

4. If you find in the defendant's favor on all issues submitted

for your consideration relating to its alleged violation of the anti-trust laws of 1899, but find in favor of the State on all or some of the issues relating to defendant's alleged violation of the anti-trust law of 1903, you may use the following form of verdict:

508 We the jury find in defendant's favor on all issues submitted for our consideration relating to its alleged violation of the anti-trust laws of 1899, but find in favor of the State under the following paragraphs of the Court's charge: ——, for alleged violations of the anti-trust laws of 1903. We further find that the defendant has violated said anti-trust laws on each of the following days embraced between March 30, 1903, and April 29, 1907, ——. We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the sum of —— Dollars.

5. If you desire to return a general verdict for defendant, you may use the following form of verdict: We the jury find for the defendant.

XVI. You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to their testimony; but you are bound to take the law as it is given you in charge by the Court, and to be governed thereby in arriving at your verdict.

V. L. BROOKS,
Judge 26th Judicial District of Texas.

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Charge of Court. Filed May 31, 1907. D. J. Pickle, Clerk.

509 *Defendant's Special Charge No. 1. Refused.*

Filed May 31, 1907.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas.

Defendant's Special Charge No. 1.

The defendant requests the Court to charge the jury as follows:

You are instructed that if you find that the defendant is liable for penalties for any act committed, under the instructions given in the general charge of the Court, you cannot consider any act as the basis of a recovery which occurred prior to the — day of September, A. D. 1904, and you will, therefore, ascertain from the evidence before you, and under the instructions of the court heretofore given you, the number of days, if any since the — day of September, 1904, on which the defendant may have committed an act subjecting it to a penalty, and fix the amount which you find against defendant for

the number of days, if any on which the defendant may have violated the law at the rate of $50.00 per day, for each day you may find such violation.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Defendant.

Refused:
V. L. BROOKS, *Judge.*

510 (Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Def't's Special Charge No. 1. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

Defendant's Special Charge No. 2. Refused.

Filed May 31, 1907.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas.

Defendant's Special Charge No. 2.

Without waiving its request to limit the right of recovery to two years before the institution of this suit, as set out in Special Charge No. 1, and on condition that the court shall refuse said Special Charge, defendant now requests the court to submit the following special instruction:

You are instructed that if you find that the defendant is liable for penalties for any act committed, under the instructions given in the general charge of the court you cannot consider any act as the basis of a recovery which occurred prior to the — day of September, A. D. 1903, and you will therefore ascertain from the evidence before you, and under the instructions of the court heretofore given you, the number of days, if any since the — day of September, 1903, on which the defendant may have committed an act subjecting it to a penalty, and fix the amount which you find against defendant for the number of days, if any, on which the defendant may have violated the law at the rate of $50.00 per day for each day you may find such violation.

511 CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Def't's Special Charge No. 2. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

Defendant's Special Charge No. 3. Refused.

Filed May 31, 1907.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas.

Defendant's Special Charge No. 3.

No. 3. Without waiving defendant's request as contained in its Special Charge No. 1 limiting the right of the State to recover penalties prior to September —, 1904, and also without waiving defendant's Special Charge No. 2, limiting the right of the State to recover penalties prior to September —, 1903, and on condition that both of said charges are refused by the Court, defendant now further requests the court to charge the jury as follows:

You are instructed that if you find that the defendant is liable for penalties for any act committed under the instructions given in the general charge of the Court you cannot consider any act as the basis of a recovery which occurred prior to the — day of September, A. D. 1902, and you will therefore ascertain from the evidence
512 before you, and under the instructions of the Court heretofore given you, the number of days, if any, since the — day of September, 1902, on which the defendant may have committed an act subjecting it to a penalty, and fix the amount which you find against defendant for the number of days, if any, on which the defendant may have violated the law at the rate of $50.00 per day, for each day you may find such violation.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Def't's Special Charge No. 3. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

513 *Defendant's Special Charge No. 4. Refused.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas.

Defendant requests the court to charge the jury as follows:
You are instructed that it is not a violation of the laws of the State of Texas, and has not been a violation of such laws at any time since May 31st, 1900, for the defendant to have sold oil or the products of petroleum to persons at different prices, and you will, therefore, disregard all evidence that may have been introduced before you, if any, showing that defendant may have at different times, or at different places sold oil or the products of petroleum to any one or more persons at a lower price than it sold the same to others.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Special Charge No. 4. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

514 *Defendant's Special Charge No. 5. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows:
You are instructed that in as much as the defendant is a corporation created and existing under the laws of the State of Missouri the

question of the legality of the ownership of a majority of its stock by the Standard Oil Company is not an issue in this case, and in this connection you are further instructed that the Anti-trust Laws of Texas, being designed merely to prohibit unlawful combinations or agreements having the purpose of fixing and regulating prices and other forbidden purposes denounced by such laws, could not be violated by the mere ownership by the Standard Oil Company of a majority of the stock of the defendant.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL, &
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Special Charge No. 5. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

515 *Defendant's Special Charge No. 6. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows:

You are instructed to find for the defendant in respect to the agreement executed on the 5th day of October, 1894, between the Waters Pierce Oil Company and the Eagle Refining Company and other persons, in as much as the defendant did not exist until after said agreement had been made and had been fully executed.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL &
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Special Charge No. 6. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

516 *Defendant's Special Charge No. 7. Refused.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas.

Defendant requests the court to charge the jury as follows:

You are instructed that it is admitted by the defendant that the Standard Oil Company of New Jersey acquired a majority of the shares of stock of the defendant company on or about the 4th day of September, 1900, and thereafter continued to own the same. Therefore, the court further instructs the jury that the acquiring and owning of said shares of stock by said Standard Oil Company did not constitute a violation of the Act approved March 31st, 1903, even though the jury may believe that the said Standard Oil Company voted said shares of stock at the meetings of the stockholders of the defendant company for the election of director of said defendant company.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 7. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

517 *Defendant's Special Charge No. 8. Refused.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

The Defendant requests the court to give the jury the following special instruction, viz:

The jury are instructed that special charges given you by the court, at the request of either counsel for the state or counsel for

the defendant, are, in all respects, as binding upon you as the instructions given you in the main charge of the court, and, in your retirement, you are instructed to give all such special instructions the same consideration and be bound by them to the same extent as the instructions given you in the main charge of the court.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Defendant.

Refused:

V. L. BROOKS, *Judge.*

(Endorsed:) *No.* 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Special Charge No. 8. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

518 *Defendant's Special Charge No. 9. Refused.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas.

Defendant requests the court to charge the jury as follows:

You are instructed that it is not a violation of the laws of the State of Texas, and has not been a violation of such laws at any time since May 31st, 1900, for the Standard Oil Company of New Jersey, or any other person or corporation to own a part of the stock of the defendant Waters Pierce Oil Company and you will therefore disregard any evidence that has been introduced before you upon this subject.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Refused:

V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 9. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

519 *Defendant's Special Charge No. 10. Refused.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

The defendant in this cause respectfully requests the court to give the jury the following special instruction, viz:—

The jury are instructed that the defendant in this case is presumed to be innocent until its guilt is established by competent evidence and beyond a reasonable doubt, and, unless you believe from the evidence and beyond a reasonable doubt that the defendant is guilty of some act in violation of the law as submitted to you in the instructions of the court, you will return a verdict for the defendant.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Defendant.

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Special Charge No. 10. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

520 *Defendant's Special Charge No. 11. Refused.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

Defendant respectfully requests the Court to give the jury the following special instructions, viz:

The jury are instructed that certain evidence has been introduced before you with reference to certain acts and things claimed to have been done by defendant, or permitted to have been done by defendant, in states other than the State of Texas, and with reference to all such evidence you are instructed that you will consider the same only for the purpose of aiding you, if such evidence shall aid you

at all, in determining whether or not the defendant has committed in the State of Texas any act or thing which, if committed in the State of Texas, would, under the instructions given you by the court, constitute a violation of the laws of this State.

You cannot convict the defendant in this case on account of any act or thing done or committed by it, or suffered by it to be done, in any state other than the State of Texas.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Defendant.

Refused:
V. L. BROOKS, *Judge.*

521 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 11. Requested by Defendant. Refused. Filed May 31, 1907, D. J. Pickle, Clerk.

Defendant's Special Charge No. 12. Refused.

Filed May 31, 1907.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows:

You are instructed to find for the defendant in respect to the agreement executed in 1894 between the Waters Pierce Oil Company and Royer Campbell, doing business under the name of the Texas Oil & Gasoline Company, in as much as the defendant did not exist until after said agreement had been made and had been fully executed.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'y- for Def't.

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 12. Requested by Defendant. Refused. Filed May 31, 1907, D. J. Pickle, Clerk.

522 *Defendant's Special Charge No. 13. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows:
You are instructed that in view of the fact that the Standard Oil Trust Agreement of January 2nd, 1882, and the supplemental agreement thereto of January 4th, 1882, were executed long prior to the creation of the defendant and there is no evidence showing that the defendant ever adopted said agreement, you will not consider the execution of said agreement or the contents of the same as in anywise affecting this defendant.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 13. Requested by defendant. Refused. Filed May 31, 1907, D. J. Pickle, Clerk.

523 *Defendant's Special Charge No. 14. Refused.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

The defendant respectfully requests the Court to give the jury the following special instructions, viz:
The jury are instructed that the Standard Oil Company, as a stockholder in the Waters Pierce Oil Company, had the right to examine the books and records of defendant and to audit its books and accounts, and that the defendant had the right to make reports

to the Standard Oil Company as such stockholder, of the course and progress of its business; and you are, therefore, further instructed that you would not be authorized in returning a verdict against the defendant in this case on account of such stock ownership by the Standard Oil Company, or on account of such examination by the Standard Oil Company of the books and records of defendant, or on account of such auditing by the Standard Oil Company of the books and accounts of defendant, or on account of the fact that defendant made reports to the Standard Oil Company of the course and progress of its business, nor on account of all of such facts taken together.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Defendant.

Refused:
V. L. BROOKS, *Judge.*

524 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 14. Requested by Defendant. Refused. Filed May 31, 1907, D. J. Pickle, Clerk.

Defendant's Special Charge No. 15. Refused.

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas.

Defendant requests the court to charge the jury as follows:

You are instructed that the defendant in this case cannot be held responsible, and is not liable in law for any act of any kind occurring prior to May 31st, 1900, and you will therefore, disregard all evidence that may have been introduced before you with respect to acts and transactions occurring prior to said 31st day of May, 1900.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Special Charge No. 15. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

525 *Defendant's Special Charge No. 16. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that the agreement executed on the 5th day of October, 1894, between the Waters Pierce Oil Company and A. W. Clem was a lawful contract at the time it was made and that it would have been lawful if made after the enactment of the Anti-trust Act of 1899, or after the enactment of the Anti-trust act of 1903. You are therefore instructed that the continued employment of said A. W. Clem by the defendant after the enactment of said laws, or either of them, would not constitute any violation of either of said Anti-trust Acts, and accordingly you will, under any view of the evidence, return a verdict in favor of the defendant in respect to that agreement.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 16. Requested by defendant. Refused. Filed May 31, 1907, D. J. Pickle, Clerk.

526 *Defendant's Special Charge No. 17. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

The defendant requests the court to instruct the jury as follows: You are instructed that inasmuch as the Standard Oil Company was a refining and producing company and inasmuch as the Waters Pierce Oil Company was a marketing company it was legitimate for the latter to purchase any part or all of its oils and other articles sold by it from the former, and that the extent to which it made such purchases is not of any importance in establishing a violation of either the Anti-trust act of 1899 or of the Anti-trust Act of 1903, and in this connection you are instructed that the fact, if it be a fact, that the Standard Oil Company, a refining and producing company, did not compete with the Waters Pierce Oil Company, a marketing company, and its customer, in the territory within which the latter operated, would not establish any violation of the Anti-trust Laws of Texas.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

527 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 17. Requested by Defendant. Refused. Filed May 31, 1907, D. J. Pickle, Clerk.

Defendant's Special Charge No. 18. Refused.

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that if you believe from the evidence that since the incorporation of the defendant under the laws of Missouri on the 29th day of May, 1900, and its obtaining a permit to transact business in the State of Texas on the 31st day of May, 1900, the defendant has, through its officers and agents, fixed and regulated the prices at which it has sold oil and other commodities handled by it in the conduct of its business independently of any control by the Standard Oil Company, then as to the alleged violation of the law by the defendant upon the alleged ground of the fixing and regulating of its selling prices by the Standard Oil Company, you should find for the defendant.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

528 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 18. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

Defendant's Special Charge No. 19. Refused.

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that there is no law in Texas against any corporation's employing any legitimate agency in the prosecution of

its business or against its using the name of such agency in the conduct of its business, and that therefore the mere fact that the defendant may at one time have used the name of the Eagle Refining Company in conducting a part of its business at Dallas, Texas, and the name of the Texas Oil & Gasoline Company in conducting a part of its business at San Antonio, Texas, would not constitute a violation of the Anti-trust laws of Texas on the part of the defendant.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

529 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 19. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

Defendant's Special Charge No. 20. Refused.

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that the Anti-trust Laws of Texas were designed to prevent combinations, agreements, etc. to accomplish the unlawful fixing and regulating of prices and other unlawful objects denounced by such laws between corporations having authority to transact business in the State of Texas. You are therefore instructed that inasmuch as it has been established by the evidence that the Standard Oil Co. has no authority to transact business in the State of Texas, and is not transacting and has never transacted business in the State of Texas, any combination or agreement between that company and the defendant if any such agreement or combination was ever made, would not be a violation of said laws or any of the provisions thereof.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

530 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 20. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

Defendant's Special Charge No. 21. Refused.

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that the agreement executed in 1894 between the Waters Pierce Oil Company and Royer Campbell, doing business under the name of the Texas Oil & Gasoline Company, was a lawful contract at the time it was made and that it would have been lawful if made after the enactment of the Anti-trust Act of 1899, or after the enactment of the Anti-trust Act of 1903. You are therefore instructed that the continued employment of said Royer Campbell by defendant after the enactment of said laws, or either of them, would not constitute a violation of either of said Anti-trust Acts, and accordingly you will, under any view of the evidence return a verdict in favor of defendant in respect to that agreement.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

531 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 21. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

Defendant's Special Charge No. 22. Refused.

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that if you believe from the evidence that there was ever formed any agreement or combination between the Standard Oil Company and the defendant for any of the purposes that would render such combination or agreement unlawful if made in Texas, still if you believe from the evidence that such agreement or combination, if any was ever made, was formed outside of the State of Texas and related exclusively to commerce between the States, then the defendant could not be prosecuted or punished for violating the laws of the State of Texas by reason of the making of such agreement or combination.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 22. Requested by Defendant. Refused. Filed May 31, 1907, D. J. Pickle, Clerk.

532 *Defendant's Special Charge No. 23. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that if you believe from the evidence that the defendant has entered into any agreement by which it has bound

itself to transact business within a certain territory in the United States, including the State of Texas, and that in pursuance of such agreement the defendant has been and is transacting its business in the State of Texas, the making of such agreement and the transaction of business thereunder by the defendant cannot be considered as in violation of the Anti-trust Laws of Texas; and in this connection you are instructed that the defendant always had and now has the right to confine its business operations to any territory desired by it and that the fact that the defendant has not extended its operations to a broader field would not render the defendant guilty of violating the Anti-trust Laws of Texas.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

533 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 23, Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

Defendant's Special Charge No. 24. Refused.

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that since the Standard Oil Company acquired a majority of the stock of the defendant prior to the enactment of the Anti-trust Act of 1903, and since, the defendant being a corporation created by the laws of Missouri, the acquisition of such stock by the Standard Oil Company cannot be inquired into by the Courts of Texas, but must be in all things treated as legal and valid, the inhibition of the Anti-trust Act of 1903 against any corporation's acquiring the shares of stock of any other corporation for the purpose of preventing or lessening competition, or tending to affect or lessen competition, can have no application to this case.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'y- for Def't.

Refused:
V. L. BROOKS, *Judge.*

534 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 24, Requested by Defendant. Refused. Filed May 31, 1907, D. J. Pickle, Clerk.

Defendant's Special Charge No. 25. Refused.

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that the defendant has at all times had the lawful right to compete with other persons and corporations in Texas in business, and you are therefore instructed to disregard any evidence in this case which merely shows competition between the defendant and other persons in Texas in the business in which defendant has been engaged.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 25. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

535 *Plaintiff's Special Charge No.* 1. *Refused.*

Filed May 31, 1907.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL CO.

Charge Requested No. 1.

You are instructed that the uncontradicted evidence shows that there existed between the Standard Oil Co. and the defendant an agreement or understanding that the former should abstain from en-

gaging in business and from the sale of oil and that said agreement or understanding was carried out from March 31, 1903 to April 29, 1907; you are instructed that this is a violation of the law of 1903, and you will find a verdict accordingly.

R. V. DAVIDSON,
Att'y Gen.
J. P. LIGHTFOOT,
Assistant.
J. W. BRADY, *Co. Att'y.*
G. W. ALLEN,
GREGORY & BATTS,
Att'ys for Pl'ff.

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters Pierce Oil Co. Pl'ff's Special Charge No. 1. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

536 *Plaintiff's Special Charge No. 2. Refused.*

Filed May 31, 1907.

In the District Court of Travis County, 26th Judicial District, May Term, 1907.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS-PIERCE OIL COMPANY.

Special Charge No. 2. Requested by Plaintiff.

The plaintiff requests the Court to instruct the jury as follows:

If you believe from a preponderance of the evidence that at any time prior to the 31st day of March, 1903, there was entered into any agreement by which any one or all of the corporations named in plaintiff's petition agreed and bound themselves to abstain from engaging in the business of selling oil or petroleum or any of its products within the state of Texas or any part thereof, and further find from a preponderance of the testimony that since said 31st day of March, 1903, the defendant has maintained or carried out or acted upon said agreement, you are charged that this would constitute a violation of the anti-trust act of 1903; and if you so find, you will further find the number of days that such agreement was carried out by the defendant, if any, and state by your verdict the number of such days, and find in favor of the State cancelling the permit of the defendant to do business in the State of Texas and

assess a penalty at the rate of fifty dollars per day for each
537 and every day you may find said agreement was carried out by the defendant, if it was so carried out.

R. V. DAVIDSON,
Attorney General.
J. P. LIGHTFOOT,
Assistant Attorney General.
JNO. W. BRADY,
County Attorney, Travis County.
GREGORY & BATTS,
ALLEN & HART,
Attorneys for Plaintiff.

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Plaintiff's Charge No. 2. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

538 *Judgment.*

June 1st, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL CO.

And now on this the 20th day of May, 1907, the above cause coming on for trial, both parties appeared by attorneys and announced ready, and a jury having been demanded, a jury of twelve good and lawful men were duly impaneled and sworn to try the case, and thereafter the case proceeded to trial, when by agreement of all parties on the 24th day of May, 1907, one of the jurors Aaron Davis, theretofore selected, was excused on account of sickness which disabled him from acting as a juror in the case, and the trial then proceeded before the Court and the eleven jurors theretofore duly selected and sworn, and the case continued on trial from day to day, and after all the pleadings, evidence and argument of counsel had been submitted to the jury, and after being duly charged by the Court, the jury retired in the custody of the proper officer to consider of their verdict, and thereafter on the 1st day of June, 1907, they returned into open Court the following verdict:

"AUSTIN, TEXAS, *June* 1, 1907.

"We the jury find for the plaintiff against the defendant on each
" of the issues submitted to us for each of the days between May 31,
" 1900, and March 31, 1903, being 1033 days, and for penalties
" 1,549,500.00 dollars.

539 "And we find for the plaintiff against the defendant on "each of the issues submitted for each of the days between "April 1, 1903, and April 29, 1907, being fourteen hundred and "eighty eight days and fix the penalties at seventy four thousand "four hundred dollars.

"We further find that the permit of the defendant to do business "in the State of Texas should be cancelled.

"We find for defendant upon all issues made by the pleadings "and not submitted in the charge of the court.

"W. T. HART, *Foreman.*
"W. J. CRISWELL.
"J. C. BRODIE.
"W. W. CHILDRESS.
"H. E. TOWNSEND.
"EARNEST GOWER.
"G. A. BERGSTROM.
"L. B. STUBBS.
"W. T. THOMPSON.
"J. C. GRINDSTAFF.
"CHAS. KROHN."

which verdict was by the Court received, ordered filed and made a part of the record of this cause.

It is therefore considered, ordered, adjudged and decreed that the plaintiff, the State of Texas, do have and recover of and from the defendant, the Waters Pierce Oil Company, a corporation, the sum of ($1,623,900.00) One Million, Six hundred and twenty three thousand nine hundred dollars, together with interest thereon from this date at the rate of six per cent. per annum, together with all costs of suit, for which execution may issue.

It is further ordered, adjudged and decreed that the permit of the defendant, the Waters Pierce Oil Company, to do business in the State of Texas, be and the same is hereby canceled and held for naught, and that the said defendant be enjoined and prohibited from doing business in the State of Texas, except interstate business, but all other business it is hereby perpetually enjoined and prohibited from transacting within the State of Texas.

540 *Defendant's Motion for New Trial.*

Filed June 1st, 1907.

In the District Court of Travis County, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

In the above entitled cause, now comes the defendant, the Waters Pierce Oil Company, and moves the Court to set aside the verdict

of the jury heretofore returned against it, and the judgment of the Court thereon rendered, and to grant this defendant a new trial in this cause for the following reasons, to-wit:

1. Because the verdict of the jury is not supported by the evidence in that the evidence wholly failed to show that the defendant at any time since June 1st, 1900, committed any act or did anything within the State of Texas or elsewhere which was in violation of the anti-trust laws of the State of Texas.

2. Because the verdict of the jury is without evidence to support it in that all of the evidence introduced before the jury showed that whatever agreements, acts and transactions may have occurred between the Standard Oil Company of New Jersey and the defendant company did not involve commerce in the State of Texas, but were with respect to and related to inter-state commerce exclusively, and therefore they were not in violation of the anti-trust laws of the State of Texas.

3. Because the verdict of the jury is without evidence to support it in that the only evidence before the jury showing any
541 agreement act or transaction between the defendant company and the Standard Oil Company of New Jersey was limited and confined to the fact of ownership by the said Standard Oil Company of stock in defendant company, and there was no evidence to show that through such ownership, or otherwise, said Standard Oil Company at any time did, in any way undertake or did in fact interfere with or control or attempt to control the business of the defendant company with reference to the matter of fixing, regulating or maintaining of prices, or in limiting or controlling the quantity of oil or other product of petroleum in the State of Texas in violation of the laws of said State.

4. Because the verdict of the jury is unsupported by the evidence and contrary to the charge of the Court as contained in the 7th paragraph thereof, in that there was no evidence showing that the defendant company, acting through its duly appointed and authorized agents, entered into or became a party to an agreement or understanding with the Standard Oil Company of New Jersey on June 1, 1900, to fix or regulate the price in Texas of oil refined from petroleum, or that the defendant company remained or continued to be a party to said agreement or understanding, if any, and persisted in carrying out the same in Texas through its duly authorized agent on June 1, 1900, or on any other day or days subsequent to June 1, 1900, and prior to March 31, 1903, nor was there any evidence that the oil, with reference to which said agreement or understanding, if any, was so made and carried out, was the subject of local as distinguished from interstate commerce.

5. Because the verdict of the jury is unsupported by the evidence and contrary to the charge of the Court as contained in the 8th paragraph thereof, in that there was no evidence showing that on
542 June 1, 1900, or on any day subsequent thereto and prior to March 31, 1903, the defendant, acting through its duly appointed and authorized agents, had brought about or permitted any combination or union of its capital with the capital of the Standard

Oil Company of New Jersey whereby the price in Texas of oil, refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or whereby the price in Texas of such oil would be reasonably calculated to be fixed or regulated, or whereby the trade in such oil in Texas was sought to be controlled or limited.

6. Because the verdict of the jury is unsupported by the evidence and contrary to the charge of the Court as contained in the 9th paragraph thereof, in that there was no evidence showing that the defendant, acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas or which tended to create in Texas, or carry out in Texas restrictions in the free pursuit in this State of the business of selling oil refined from petroleum other than oil which was the subject of interstate as distinguished from local commerce, or to fix, maintain or increase the price of such oil in Texas, or to prevent or lessen competition in Texas in the sale of such oil, and that the defendant remained or was a party to and acted under such combination, if any, on March 31, 1903, or on any day subsequent thereto and prior to April 29, 1907.

7. Because the verdict of the jury is unsupported by the evidence and contrary to the charge of the Court as contained in the 10 paragraph thereof, in that there was no evidence showing that the direction of the affairs of the defendant and the affairs of the
543 Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on any day subsequent thereto and prior to April 29, 1907, and that they were placed under such management and control, if any, by their respectively authorized officers under such circumstances that such common management or control, if such there was, created or tended to create or carry out restrictions in the sale in Texas of oil of the kind and character mentioned in the 9th paragraph of the charge, or to fix, maintain or increase the price in Texas of such oil or to prevent or lessen in Texas the Competition in the sale of such oil.

8. Because the verdict of the jury is unsupported by the evidence and contrary to the charge of the Court as contained in the 11th paragraph thereof, in that there was no evidence showing that the Standard Oil Company of New Jersey had on March 31, 1903, or any day subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation and thereby effected a combination of said two corporations, nor was there any evidence showing that said stock was acquired and combination effected, if any, with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of the kind and character of oil mentioned, or that the effect of such combination, if any, tended to affect or lessen the competition in the sale in Texas of said oil.

9. Because the verdict of the jury, in so far as it assesses penalties against the defendant on each of the issues submitted to the jury

for each of the days between May 31, 1900, and March 31, 1903, being, as found by the jury, 1033 days, is unsupported by the evidence, in that there was no evidence showing that the defendant, if it violated the law in any of the respects complained of be-
544 tween May 31, 1900, and March 31, 1903, committed such violation on any particular day, nor was there any evidence showing that the defendant, if it violated the law in any of the respects complained of between May 31, 1900, and March 31, 1903, committed such violation for either 1033 days or any other definite number of days.

10. Because the verdict of the jury, in so far as it finds for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being 1488 days, as found by the jury, is unsupported by the evidence, in that there was no evidence showing that the defendant, if it violated the law in any of the respects complained of between April 1, 1903, and April 29, 1907, committed such violations on any particular day, nor was there any evidence showing that the defendant, if it violated the law in any of the respects complained of between April 1, 1903, and April 29, 1907, committed such violation for 1488 days or any other definite number of days.

11. Because the verdict of the jury in assessing penalties against the defendant at the sum of $1,549,500.00 for alleged violations of the law for each of the days between May 31, 1900, and March 31, 1903, was so grossly and shockingly excessive as to show passion and prejudice upon the part of the jury against the defendant.

12. Because the verdict of the jury in assessing penalties against the defendant for alleged violations of the law for each of the days between May 31, 1900, and March 31, 1903, at the sum of $1,549,-500.00 was so manifestly excessive as to amount to the deprivation of the property of the defendant without due process of law in contravention of Section 1 of the 14th Amendment to the Constitution of the United States.

13. Because the verdict of the jury in assessing penalties against the defendant for alleged violations of the law for each of
545 the days between May 31, 1900, and March 31, 1903, at the sum of $1,549,500.00 was so manifestly excessive as to amount to the imposition of excessive fines in violation of Section 13 of Article 1 of the Constitution of the State of Texas.

14. Because the verdict of the jury in assessing penalties against the defendant for alleged violations of the law for each of the days between May 31, 1900, and March 31, 1903, at the sum of $1,549,-500.00, and in assessing penalties against the defendant for alleged violations of law for each of the days between April 1, 1903, and April 29, 1907, at the sum of $74,400.00, is so manifestly excessive as to amount to the deprivation of the property of the defendant without due process of law in contravention of Section 1 of the 14th Amendment to the Constitution of the United States.

15. Because the verdict of the jury in assessing penalties against the defendant for alleged violations of the law for each of the days between May 31, 1900, and March 31, 1903, at the sum of $1,549,-

500.00, and in assessing penaltics against the defendant for alleged violations of the law for each of the days between April 1, 1903, and April 29, 1907, at the sum of $74,400.00, is so manifestly excessive as to amount to the imposition upon the defendant of excessive fines in violation of Section 13 of Article 1 of the Constitution of the State of Texas.

16. Because the Court erred in instructing the jury that they could assess penalties for alleged violations of the Anti-Trust Act of 1899 in excess of $50 per day.

The foregoing motion is presented by defendant without waiving any error committed by the court in any of its rulings on questions of law heretofore made, all of which rulings and errors will be insisted upon by the defendant in the further progress of this case in the event the court shall refuse this motion, and defendant also reserves the right to amend this motion and to assign such
546 additional grounds for setting aside said verdict and judgment as may hereafter present themselves, if it shall see proper so to do.

CLARK & BOLINGER,
N. A. STEDMAN,
D. W. ODELL,
COCHRAN & PENN,
Att'ys for Defendant.

J. D. JOHNSON &
H. S. PRIEST,
Of Counsel.

(Endorsed:) #24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Defendant's Motion for New Trial. Filed June 1st, 1907. D. J. Pickle, Clerk. By E. Huppertz, Deputy.

Order on Motion.

June 7th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

And now on this the 7th day of June, A. D. 1907, came on to be heard the motion of the defendant Waters Pierce Oil Company to be granted a new trial of this cause, and the Court having heard the motion and argument thereon and considered the same is of the opinion that same should be overruled;

It is therefore ordered, adjudged and decreed by the Court that the said motion be and the same is hereby now overruled and a new trial of this cause is hereby now refused. To which ruling and action of the Court the defendant in open Court excepts and gives

notice of appeal to our Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin, Texas.

It is further ordered that the defendant be and is allowed 20 days from and after final adjournment of the present term of this Court in which to file Stenographer's report of the evidence, Statement of facts and bills of exceptions.

547 *Appeal Bond in Main Case.*

Filed June 15th, 1907.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

Know all men by these presents:

That, whereas, in the above entitled and numbered cause in the District Court of Travis County, State of Texas, Twenty-sixth Judicial District, a judgment was rendered in behalf of the plaintiff, the State of Texas, against the defendant, the Waters Pierce Oil Company, in words and figures as follows, to-wit:

In District Court, Travis County, Texas.

June 1st, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL CO.

And now on this the 20th day of May, 1907, the above cause coming on for trial, both parties appeared by Attorneys, and announced ready, and a jury having been demanded, a jury of twelve good and lawful men were duly impaneled and sworn to try the case, and thereafter the case proceeded to trial, when, by agreement of all parties on the 24th day of May, 1907, one of the jurors, Aaron Davis, theretofore selected, was excused on account of sickness, which disabled him from acting as a juror in the cause, and the trial then proceeded before the Court and the eleven jurors there-
548 tofore duly selected and sworn, and the case continued on trial from day to day, and after all the pleadings, evidence and argument of counsel had been submitted to the jury, and after being duly charged by the Court, the jury retired in the custody of the proper officer to consider of their verdict, and thereafter on the

1st day of June, 1907, they returned into open Court the following verdict:

"AUSTIN, TEXAS, *June* 1, 1907.

"We the Jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties 1,549,500.00 dollars.

And we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty eight days and fix the penalties at seventy four thousand four hundred dollars.

We further find that the permit of the defendant to do buisiness in the State of Texas should be canceled.

We find for defendant upon all issues made by the pleadings and not submitted in the charge of the court.

W. T. HART, *Foreman.*
W. J. CRISWELL.
G. A. BERGSTROM.
J. C. BRODIE.
L. B. STUBBS.
W. W. CHILDRESS,
W. T. THOMPSON.
H. E. TOWNSEND.
J. C. GRINDSTAFF.
EARNEST GOWER.
CHAS. KROHN."

549 which verdict was by the Court received, ordered filed, and made a part of the record of this cause.

It is therefore, considered, ordered, adjudged and decreed that the plaintiff, The State of Texas, do have and recover of and from the defendant, The Waters Pierce Oil Company, a corporation, the sum of ($1,623,900.00) One Million, Six Hundred and twenty-three thousand nine hundred dollars, together with interest thereon from this date at the rate of six per cent. per annum, together with all costs of suit, for which execution may issue;

It is further ordered, adjudged, and decreed that the permit of the defendant, The Waters Pierce Oil Company, to do business in the State of Texas, be, and the same is, hereby cancelled and held for naught, and that the said defendant be enjoined and prohibited from doing business in the State of Texas, except interstate business, but all other business it is hereby perpetually enjoined and prohibited from transacting within the State of Texas.

THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court in and for said County and State, do hereby certify that the within and foregoing is a true and correct copy of the Judgment in cause No. 24,551, The State of Texas *vs.* Waters Pierce Oil Company, as same appears of record in Minute Book 12, page 349, *et seq.*, of the records of this office.

Given under my hand and seal of office, at Austin, Texas, this the 14th day of June, A. D. 1907.

[SEAL.] D. J. PICKLE,
Clerk District Court, Travis County, Texas,
By J. A. BELGER, *Deputy.*

550 And, whereas, the defendant in said cause duly filed its motion for a new trial, which said motion was by the Court overruled and refused by order and judgment entered on the 7th day of June, A. D. 1907, and the said defendant then and there in open Court excepted and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

And, whereas, the defendant desires to perfect its said appeal and supersede the judgment aforesaid pending its said appeal;

Now, therefore, we, the said Waters Pierce Oil Company, defendant aforesaid and appellant, as principal, and The American Surety Company of New York, a corporation duly qualified and authorized to execute this bond, as surety, together with Jno. H. Kirby, as further surety herein, do hereby each acknowledge ourselves indebted, held and firmly bound to pay to the State of Texas, plaintiff aforesaid and appellee herein, the full sum of Three Million, Two Hundred and Seventy-Five Thousand ($3,275,000.00) Dollars, conditioned that the said appellant, the Waters Pierce Oil Company, shall prosecute its appeal with effect, and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against it, it shall perform its judgment, sentence or decree, and pay all such damages as said court may award against it.

In witness of all which the said Waters Pierce Oil Company causes this bond to be executed by T. B. Cochran, its agent and attorney at law and in fact, and the said The American Surety Company of New York causes this bond to be executed by J. E. Lucy, its Resident Vice-President and duly appointed agent and attorney in fact, and the said Jno. H. Kirby execute the same in his own
551 proper person, this the 15th day of June, A. D. 1907.

THE WATERS PIERCE OIL COMPANY,
By T. B. COCHRAN,
Attorney at Law and in Fact.
THE AMERICAN SURETY COMPANY OF NEW YORK,
By JAS. E. LUCY,
[SEAL.] *Resident Vice President and Agent.*

Attest:
W. T. DECHERD,
Resident Assistant Secretary.
JNO. H. KIRBY.

Approved June 15, 1907.
D. J. PICKLE, *Clerk.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Appeal Bond No. 1. Filed June 15, 1907. D. J. Pickle, Clerk.

552 *Application for a Receiver.*

Filed June 1, 1907.

In the District Court, Travis County, Texas, Twenty-sixth Judicial District.

No. 24551.

STATE OF TEXAS, Plaintiff,
vs.
WATERS-PIERCE OIL COMPANY, Defendant.

To the Honorable V. L. Brooks, Judge of said Court:

And now comes the State of Texas, acting by and through her Attorney General, and the County Attorney of Travis County, Texas, acting under the direction and supervision of the said Attorney General, and shows to the Court:

First. That on the 1st day of June, 1907, in this court, in the above entitled and numbered cause, a judgment was rendered in favor of the State of Texas against the defendant, the Waters Pierce Oil Company, for the sum of One Million Six Hundred twenty-three Thousand Nine Hundred ($1,623,900.00) Dollars, and said judgment further providing for the cancellation of the permit of the said defendant to do business in the State of Texas; that said cause of action and said judgment was based upon alleged violation of the Anti-trust law of the State of Texas.

Second. That in a certain suit pending in the State of Missouri, wherein the State of Missouri is plaintiff, and the said above named defendant, the Waters Pierce Oil Company, among others, is defendant, a suit was instituted for the forfeiture of the charter of said defendant, Waters Pierce Oil Company and prohibiting it doing business in said State, said suit being instituted in the Su-
553 preme Court of the State of Missouri; that in pursuance to law the said Supreme Court of the State of Missouri appointed a commissioner to hear testimony and make his report and findings of fact, and recommendation of law thereon; that after hearing the testimony, the said commissioner found in favor of the State of Missouri on all issues in said case, and recommended to the said Supreme Court of Missouri that the charter of the said Waters Pierce Oil Company be cancelled; that plaintiff is informed and believes that said recommendations have the force and effect of a judgment forfeiting the charter of the said defendant, Waters-Pierce Oil Company.

Third. That the penalties recovered in this cause by plaintiff, the State of Texas, cannot be collected outside the State of Texas, and the property of the defendant situated in the State of Texas, as the plaintiff is informed and believes, is wholly inadequate to pay the above mentioned judgment; that the great bulk of the property within the State of Texas belonging to the defendant, subject to the

payment of said judgment, consists of current accounts with merchants and dealers in the State of Texas, of tank cars, of money on hand, of oil that is easily removed, and property of that kind and character, practically the whole of it being personal movable, property and if carried beyond the limits of this State cannot be pursued by the State of Texas, and the State would have no way of collecting the above mentioned judgment; that under and by virtue of an act of the Legislature of the State of Texas, approved April 11, 1907, the State has a lien upon all of said property to secure the payment of the above mentioned judgment.

Fourth. That under the judgment of ouster rendered in this cause, the defendant has no right to do business in this State and has been convicted of doing business in this State in violation of the law for each and every day since the issuance of its permit seven
554 years ago; that it is necessary to preserve and protect the rights of the State that said business of said defendant should be conducted and carried on, at least temporarily, and be kept a going concern in this State.

Wherefore, plaintiff requests the Court to appoint a receiver to take charge of all the property and assets of every kind, character and description of the defendant situated within the State of Texas, pending the hearing of this application; that this court grant its most gracious writ of injunction, restraining and prohibiting the defendant, its officers, agents, attorneys and employees, or any of them, from removing from the State of Texas any part of the property or assets of said defendant situated within the State of Texas.

R. V. DAVIDSON,
Attorney General,
JEWEL P. LIGHTFOOT,
Ass't Attorney General.
JNO. W. BRADY,
County Attorney, Travis Co. Tex.
GREGORY & BATTS,
ALLEN & HART,
Attorneys for the State of Tex.

555 THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared Jno. W. Brady, County Attorney of Travis County, Texas, who, after being by me duly sworn on his oath, says that the facts stated in the foregoing application are true, except where stated upon information and belief, and where so stated he verily believes them to be true.

JNO. W. BRADY.

Sworn to and subscribed before me on this the 1st day of June, A. D. 1907.

ROSE LITTMAN,
Notary Public, Travis Co., Tex.

AUSTIN, TEXAS, *June* 1, 1907.

In Chambers.

The above application for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, being presented to me, it is hereby set down for hearing on the 8th day of June, 1907, at 10 o'clock A. M. at the Court House in Travis County, Texas, and the Clerk will issue a notice to the defendant accordingly. Upon consideration, the application for a temporary injunction pending the hearing of said application is hereby granted, and the Clerk of this Court is instructed to issue such temporary injunction
556 under his hand and the seal of court, restraining and prohibiting the defendant, its officers, agents, attorneys and employees, or any of them, from removing beyond the State of Texas any of the property or assets of the defendant until the further orders of this court.

V. L. BROOKS,
Judge 26th Judicial District of Texas.

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Application for a Receiver. Filed June 1st, 1907. D. J. Pickle, Clerk. By J. A. Belger, Deputy.

557 *Defendant's Answer to Plaintiff's Application for Receiver.*

Filed June 10th, 1907.

In District Court of Travis Co., Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS-PIERCE OIL CO.

Now comes the defendant in the above entitled and numbered cause, by its attorneys, and excepts to the application filed by the plaintiff herein on June 1st, 1907, for the appointment of a receiver of the property and assets of this defendant, and says that said application is insufficient in law, and shows no sufficient cause for the appointment of such receiver, and of this defendant prays judgment of the Court.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Def't.

And for answer to said application defendant denies all and singular the allegations therein contained.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Def't.

558 And for further answer to said application, and for the purpose of replying to the portion thereof relating to the said suit pending in the State of Missouri, defendant says that it is not true, as stated in said application that the recommendation of said Commissioner have the force and effect of a judgment forfeiting the charter of this defendant, but, on the contrary, no judgment has been rendered in said cause in said Supreme Court of Missouri, and said report of said Commissioner does not have the effect of a judgment, but that said report and recommendations of said Commissioner may be either approved or rejected by said Supreme Court of Missouri, and will have no force or effect unless confirmed and approved by said Supreme Court of Missouri.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Before me, the undersigned officer, on this day personally appeared D. W. Odell and R. L. Penn, who each being by me first duly sworn on oath deposes and says: that he is one of the attorneys for defendant in the above entitled and numbered cause and that the facts stated in the foregoing special plea are true as he is informed and verily believes.

D. W. ODELL.
R. L. PENN.

Subscribed and sworn to before me by D. W. Odell & R. L. Penn this 10th day of June, A. D. 1907.

[SEAL.] D. J. PICKLE,
Clerk District Court, Travis Co., Texas,
By E. HUPPERTZ, *Deputy.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters Pierce Oil Co. Defendant's Answer to Plaintiff's Application for Appointment of Receiver. Filed June 10th, 1907. D. J. Pickle, Clerk. By E. Huppertz, Deputy.

559 *Order Granting Injunction.*

June 1st, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

IN CHAMBERS, AUSTIN, TEXAS, *June* 1, 1907.

On this day came on to be heard the application for a temporary injunction, restraining the defendant from removing beyond the State of Texas any of its property or assets, and the Court having

considered said application is of the opinion that same should be granted;

It is therefore ordered, adjudged and decreed that the defendant, the Waters Pierce Oil Company, its officers, agents, attorneys and employees, each and all of them, are hereby restrained, enjoined and prohibited from removing beyond the limits of the State of Texas any of the property or assets of the said defendant, the Waters-Pierce Oil Company, until further orders of this Court.

560 *Order Granting Application for Appointment of Receiver.*

June 10th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

And now on this the 10th day of June, 1907, at a regular term of this Court, there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation, pending the further disposition of this cause, and the Court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all of the property and assets of the defendant the Waters Pierce Oil Company situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this Court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the public in the State of Texas; that the temporary injunction heretofore granted, prohibiting the defendant from removing any of its property and assets beyond the limits of the State of Texas, be and the same is hereby continued in force until the further orders of this Court. To all of which action the defendant in open Court excepts, and in open Court gives notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas.

561 *Order Appointing Receiver.*

June 13th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

On this the 10th day of June, A. D. 1907, in this cause an order was made and entered by this Court granting the application of the

plaintiff, the State of Texas, for the appointment of a receiver herein, the Court at the time of the making of said order naming as receiver Robert J. Eckhardt and time being given both parties to urge any objection they might have to said Eckhardt as such receiver, and no objection having been made to said Eckhardt, the Court now on this 13th day of June, 1907, confirming said order and in pursuance thereof names and appoints as Receiver herein of the property in said order described said Robert J. Eckhardt, with the duties and powers therein named and fixes the amount of his bond as such receiver at ($250,000.00) Two hundred and fifty thousand dollars.

And defendant renews its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin.

562 *Order Amending Orders Appointing Receiver.*

June 15th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

And now on this 15th day of June, A. D. 1907, at a regular term of this Court,

It is considered, ordered, adjudged and decreed by the Court that the orders of this Court made and entered in said cause on the 10th day of June, A. D. 1907, and the 13th day of June, A. D. 1907, be so amended as to hereafter read as follows:

And now on this 10th day of June, 1907, at a regular term of this Court there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation, pending the further disposition of this cause, and the Court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all the property and assets of the defendant, the Waters Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this Court, and said receiver is hereby directed and
563 instructed to continue and carry on the business of the defendant until such future time as the Court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the public in the State of Texas, with the right, power, and authority to continue the various clerks, servants and agents of every class and grade now in the employ of the defendant or to discharge them and employ others at his discretion and to require such bonds and security to himself as Receiver from any of the present employees or those hereafter engaged by him as he may think expedient and proper, and to sell the present stock of oil and other products and personal

property in the hands of the defendant and which may come into his hands as receiver and to purchase and sell other oil, products and personal property in the regular course of business of the defendant to the same effect as the defendant could or might have done in the continuation of said business so that said business may be kept up to its present condition as near as may be; and the said Receiver shall have power, under control of the Court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to insure the same against loss and destruction by fire or otherwise as he may deem proper, to receive rents, collect, compound for, compromise demands, employ one or more attorneys at law, make transfers and generally to do such acts respecting the property as the Court may authorize and all the expenses of said receivership, including taxes, insurance premiums, attorney's fees, his own compensation and all expenses of said receivership to be paid as a part of the Court costs of the suit.

That the temporary injunction heretofore granted, prohibiting the defendant from moving any of its property and assets
564 beyond the limits of the State of Texas, be and the same is hereby continued in force until the further orders of this Court.

To all of which action the defendant in open Court excepts, and in open Court gives notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas.

And on this 13th day of June, A. D. 1907, the Court confirming said order and in pursuance thereof names and appoints as Receiver herein of the property in said order described Robert J. Eckhardt, who is a resident citizen of the County of Williamson, in the State of Texas, with the duties and powers therein named, and fixes the amount of his bond as such Receiver at ($250,000.00) Two Hundred and fifty thousand dollars, to be made payable to the Judge of this Court and his successors in office, for the use of all parties interested in said property and this suit.

And defendant renewed its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin.

565 *Order Fixing Amount of Appeal Bond in Receivership.*

June 15th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

And now on this the 15th day of June, 1907, in open Court it is ordered by the Court in the above cause, that $100,000.00 be and the same is hereby fixed as the amount of bond which the defendant shall be required to give in order to supercede the judgment of the Court placing defendant's property in the hands of a Receiver; and,

It is further ordered that upon the approval by the Court and the filing with the Clerk by defendant of a good and sufficient bond conditioned as required by law for said amount, further proceedings herein be suspended pending appeal.

But this order shall not effect or rescind the order heretofore entered prohibiting and enjoining the defendant, its servants, officers, agents and attorneys from removing any of its property or assets beyond the limits of the State of Texas, but said injunction shall remain in full force and effect pending the appeal from the order appointing a receiver herein.

And thereupon the defendant in open Court tendered to the Court and Clerk certain papers which it stated to be its appeal bond, and an affidavit with reference thereto, which bond purported to have as sureties thereon the American Surety Company of New York and John H. Kirby, and requested the Court and Clerk to approve the same, but the Court deferred further action in the premises and stated that it would announce its further action on said bond at 10 o'clock A. M. June 19, 1907.

566 *Order Approving Bond of Receiver.*

June 19th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

And now on this the 19th day of June, A. D. 1907, Robert J. Eckhardt having presented his oath and bond as Receiver under the appointment heretofore made in this cause, and said bond being examined and found to be in proper form and subscribed with competent sureties as required by law;

It is therefore ordered, adjudged and decreed by the Court that the said bond be and the same is hereby approved and the Clerk of this Court is directed to file said bond and enter the same in the minutes of this Court.

Bond and Oath of Receiver.

"THE STATE OF TEXAS, *County of Travis:*

Know all men by these presents:

That we, Robert J. Eckhardt as principal and Francis Horace Welch, F. L. Welch, F. A. Allison, O. E. Roberts, J. Melasky, Jno. P. Sturgis, G. E. King, J. W. Womack, Howard Bland, S. G. Yakey, G. M. Booth, L. H. Goldstein, Carl Grau, C. T. Everett, Albert Eikel, T. W. Marse, C. A. Nelson, O. A. Nelson, W. Davidson, Walter W. Taylor, Howell E. Smith, T. E. Waggoner, R. H. Gaston, T. C. Dunn, J. L. Thompson, W. R. Eckhardt, E. P. Wilmot, O.
567 L. Noroworthy, W. T. Brown, Walter Tips, as sureties, are held and firmly bound unto V. L. Brooks, Judge of the Dis-

trict Court of Travis County, Texas, for the 26th Judicial District, and his successors in office, for the use of all parties interested in the action of The State of Texas *vs.* Waters Pierce Oil Company, No. 24,551, in said Court, and the property in said action placed in the hands of a Receiver, in the sum of Two hundred and fifty thousand dollars.

The condition of the above obligation is such that, whereas, the said Robert J. Eckhardt has by orders of the said District Court bearing date 10th day of June, A. D. 1907, and the 13th day of June, A. D. 1907, and amended by an order made entered in said action in said court on the 15th day of June, A. D. 1907, been appointed receiver in said action.

Now, if the said Robert J. Eckhardt shall faithfully discharge all of the duties of Receiver in said action of The State of Texas *vs.* Waters Pierce Oil Company No. 24,551 in said Court, and obey the orders of the Court therein, then this obligation shall be null and void, otherwise to remain in full force and effect.

Witness our hands, this the 15th day of June, A. D. 1907.

ROBERT J. ECKHARDT.
F. L. WELCH.
J. MELASKY.
G. E. KING.
S. G. YAKEY.
CARL GRAU.
T. W. MARSE.
W. DAVIDSON,
T. E. WAGGONER.
J. L. THOMPSON.
W. R. ECHARDT, M. D.
O. L. NOROWORTHY, M. D.
FRANCIS HORACE WELCH.
O. E. ROBERTS.
J. W. WOMACK.
G. M. BOOTH.
C. T. EVERETT.
C. A. NELSON.
WALTER W. TAYLOR.
R. H. GASTON,
By L. N. THOMPSON,
Att'y in Fact.
E. P. WILMOT.
W. T. BROWN.
F. A. ALLISON.
JNO. P. STURGIS.
HOWARD BLAND.
L. H. GOLDSTEIN.
ALBERT EIKEL.
O. A. NELSON.
HOWELL E. SMITH.
T. C. DUNN.
WALTER TIPS.

568 *Approval.*

Examined and approved by the undersigned and ordered filed this 19th day of June, 1907, at 10.29 o'clock A. M.

V. L. BROOKS, *Judge.*

Approved June 19, 1907, 10.35 A. M.

D. J. PICKLE, *Clerk.*

Oath of Receiver.

THE STATE OF TEXAS, *County of Williamson:*

I, Robert J. Eckhardt, do solemnly swear that I will faithfully perform all the duties of Receiver in the action of The State of Texas *vs.* Waters Pierce Oil Company, No. 24551 in the District Court of Travis County, Texas, for the 26th Judicial District.

ROBERT J. ECKHARDT.

Sworn to and subscribed before me this 15 day of June, A. D. 1907. Given under my hand and seal of office.

[SEAL.] O. E. ROBERTS,

Notary Public in and for Williamson County, Texas."

569 *Order Approving Supersedeas Bond.*

Filed June 19th, 1907.

24551.

THE STATE OF TEXAS

vs.

THE WATERS PIERCE OIL CO.

And now on this the 19th day of June, 1907, came the defendant by its attorneys and presented in open Court their supercedeas bond in Receivership proceeding and the Court having examined said bond and finds same in proper form and subscribed with sufficient sureties as required by law;

It is therefore ordered, adjudged and decreed by the Court that the said Supercedeas bond be and the same is hereby approved and the Clerk is directed to file said bond and enter the same in the minutes of this Court.

570 *Defendant's Bill of Exceptions to Orders and Proceedings in Reference to Receivership.*

Filed June 29, 1907.

In the District Court of Travis County, Texas, 26th Judicial District, May Term, A. D. 1907.

No. 24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

Be it remembered that on the 22nd day of September, A. D. 1906, the State of Texas instituted suit by original petition filed in the above court against the defendant, the Waters Pierce Oil Company, in which petition and for cause of action against the defendant, the plaintiff alleged that defendant had on each and every day from June 1st, 1900, down to and including the 31st day of March, 1903, in each and every County in the State of Texas, committed acts in violation of Chapter 146 of the Acts of the Twenty-sixth Legislature, known as the Anti-trust law of 1899, and being entitled "An act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles; and to prevent the formation or operation of pools, trusts, monopolies, and combinations of charters of corporations that violates the terms of this Act, and to authorize the institution of prosecutions and suits therefor;" and that said defendant had in each and every County in the State of Texas, and on each and every day from the 1st day of April, 1903, to the filing of said suit committed acts in violation of Chapter 94 of the Acts of
the Twenty-eighth Legislature of the State of Texas, known
571 as the anti-trust law of 1903, and being entitled, "An Act to
define, prohibit and declare illegal, trusts, monopolies and conspiracies in restraint of trade; to prescribe penalties for forming or being connected with such trusts, monopolies, and conspiracies; and to provide for the suppression of the same and to promote free competition in the State of Texas; and to repeal all laws in conflict therewith;" and in said petition the plaintiff sued for the maximum penalty provided in each of said statutes, and for the aggregate sum of $5,228,400.00.

That after the filing of said petition the defendant was duly served with citation, filed its answer to the October Term of said Court, A. D. 1906, and thereafter said cause was continued at said October term, and likewise at the March Term of said Court, A. D. 1907, and the pleadings of both parties having been amended the State filed its second amended original petition by leave of the Court, in which the plaintiff alleged that defendant had in each and every County and on each and every day from the 1st day of June, A. D. 1900, down to the 29th day of April, 1907, committed acts in violation of each of the two anti-trust statutes above set out, and in said amended

petition the State continued to claim the maximum penalty provided in each of said statutes.

In said original petition and in the said second amended original petition the State alleged that the defendant was a foreign corporation chartered under the laws of the State of Missouri, and had during the period aforesaid, been engaged in transacting business in the State of Texas under a permit granted to the defendant by the Secretary of State of the State of Texas on May 31st, 1900, and in said second amended original petition the said State of Texas prayed for relief as follows:

"Plaintiff prays that it have judgment cancelling the permit issued to defendant on the 31st day of May, 1900, and for an
572–574 injunction restraining it from doing business within this State, and that it have judgment for the sum of $5,239,000.00, penalties, and it prays for costs and general relief."

And be it further remembered that in its answer to the said last named petition filed by the State, the defendant, among other things, denied all and singular the allegations contained in said petition and plead not guilty to the offenses therein charged against it, and upon said petition and said answer a trial was had before said Court and a jury duly impanelled, beginning on the 20th day of May, A. D. 1907, and concluding on the 1st day of June, A. D. 1907, when the jury returned a verdict in favor of the plaintiff and the Court rendered judgment thereon in words and figures as follows:

"24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

And now on this the 20th day of May, 1907, the above cause coming on for trial, both parties appeared by Attorneys, and announced ready, and a jury having been demanded, a jury of twelve good and lawful men were duly impanelled and sworn to try the case, and thereafter the case proceeded to trial, when, by agreement of all parties on the 24th day of May, 1907, one of the jurors, Aaron Davis, theretofore selected, was excused on account of sickness, which disabled him from acting as a juror in the cause, and the trial then proceeded before the Court and the eleven jurors theretofore duly selected and sworn, and the case continued on trial from day to day, and after all the pleadings, evidence and argument of counsel had been submitted to the jury, and after being duly charged by the Court, the jury retired in the custody of the proper officer to consider of their verdict, and thereafter on the 1st day of June, 1907, they returned into open court the following verdict:

575 "AUSTIN, TEXAS, *June* 1, 1907.

"We the jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties $1,549,500.00 Dollars.

"And we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty days and fix the penalties at seventy four thousand four hundred dollars.

"We further find that the permit of the defendant to do business in the State of Texas should be cancelled.

"We find for defendant upon all issues made by the pleadings and not submitted in the charge of the court.

W. T. HART, *Foreman.*
W. J. CRISWELL.
C. A. BERGSTROM.
J. C. BRODIE.
L. B. STUBBS.
W. W. CHILDRESS.
W. T. THOMPSON.
H. E. TOWNSEND.
J. C. GRINDSTAFF.
EARNEST GOWER.
CHAS. KROHN.

which verdict was by the court received, ordered filed and made a part of the record of this cause.

"It is, therefore, considered, ordered, adjudged and decreed that the plaintiff, the State of Texas, do have and recover of and from the defendant, the Waters Pierce Oil Company, a corporation, the sum of ($1,623,900.00) One Million, Six Hundred and
576 Twenty-three Thousand Nine Hundred Dollars, together with interest thereon from this date at the rate of six per cent. per annum, together with all costs of suit, for which execution may issue;

"It is further ordered, adjudged and decreed that the permit of the defendant, the Waters Pierce Oil Company, to do business in the State of Texas, be, and the same is, hereby cancelled and held for naught, and that the said defendant be enjoined and prohibited from doing business in the State of Texas, except interstate business, but all other business it is hereby perpetually enjoined and prohibited from transacting within the State of Texas."

And be it further remembered that upon said 1st day of June A. D. 1907, the defendant filed with the Clerk of said court its motion to set aside the verdict of the jury aforesaid and the judgment thereon rendered, and to grant it a new trial.

And be it further remembered that after the filing of the motion aforesaid, the plaintiff, the State of Texas, through its attorneys, presented to the Honorable V. L. Brooks, Judge of this Court, its application for the appointment of a receiver, and upon the application the said Judge of this Court endorsed his fiat, and said application and fiat was thereupon, on said 1st day of June, A. D. 1907, filed with the Clerk of this Court, and the same is in words and figures as follows:

In the District Court, Travis County, Texas, Twenty-sixth Judicial District.

No. 24551.

STATE OF TEXAS, Plaintiff,
vs.
WATERS-PIERCE OIL COMPANY, Defendant.

To the Honorable V. L. Brooks, Judge of said Court:

And now comes the State of Texas, acting by and through
577 her Attorney General, and the County Attorney of Travis County, Texas, acting under the direction and supervision of the *of the* said Attorney General, and shows to the Court:

First. That on the 1st day of June, 1907, in this Court, in the above entitled and numbered cause, a judgment was rendered in favor of the State of Texas against the defendant, The Waters Pierce Oil Company, for the sum of One Million, Six Hundred Twenty-three Thousand, Nine Hundred ($1,623,900.00) Dollars, and said judgment further providing for the cancellation of the permit of the said defendant to do business in the State of Texas; that said cause of action and said judgment was based upon alleged violation of the Anti-trust law of the State of Texas.

Second. That in a certain suit pending in the State of Missouri, wherein the State of Missouri is plaintiff, and the said above named defendant, the Waters-Pierce Oil Company, among others, is defendant, a suit was instituted for the forfeiture of the charter of said defendant, Waters-Pierce Oil Company, and prohibiting it doing business in said State, said suit being instituted in the Supreme Court of the State of Missouri; that in pursuance to law the said Supreme Court of the State of Missouri appointed a commissioner to hear testimony and make his report and findings of fact, and recommendation of law thereon; that after hearing the testimony, the said Commissioner found in favor of the State of Missouri on all issues in said case, recommended to the said Supreme Court of Missouri that the charter of the said Waters Pierce Oil Company be cancelled; that plaintiff is informed and believes that said recommendations have the force and effect of a judgment forfeiting the charter of the said defendant, Waters-Pierce Oil Company.

Third. That the penalties recovered in this cause by plaintiff,
the State of Texas, cannot be collected outside of the State of
578 Texas, and the property of the defendant situated in the State of Texas, as the plaintiff is informed and believes, is wholly inadequate to pay the above mentioned judgment; that the great bulk of the property within the State of Texas belonging to the defendant, subject to the payment of said judgment, consists of current accounts with merchants and dealers in the State of Texas, of tank cars, of money on hand, of oil that is easily removed, and property of that kind and character, practically the whole of it being personal, movable property and if carried beyond the limits of this State cannot be pursued by the State of Texas, and the State would have no

way of collecting the above mentioned judgment; that under and by virtue of an act of the Legislature of the State of Texas, approved April 11, 1907, the State has a lien upon all of said property to secure the payment of the above mentioned judgment.

Fourth. That under the judgment of ouster rendered in this cause, the defendant has no right to do business in this State and has been convicted of doing business in this State in violation of the law for each and every day since the issuance of its permit seven years ago; that it is necessary to preserve and protect the rights of the State that said business of said defendant should be conducted and carried on, at least temporarily, and be kept a going concern in this State.

Wherefore, plaintiff requests the court to appoint a receiver to take charge of all the property and assets of every kind, character and description of the defendant situated within the State of Texas, pending the hearing of this application; that this court grant its most gracious writ of injunction, restraining and prohibiting the defendant, its officers, agents, attorneys and employees, or any
579 of them, from removing from the State of Texas any part of the property or assets of said defendant situated within the State of Texas.

R. V. DAVIDSON,
Attorney General.
JEWEL P. LIGHTFOOT,
Asst. Attorney General.
JNO. W. BRADY,
County Attorney, Travis Co. Tex.
GREGORY & BATTS,
ALLEN & HART,
Attorneys for the State of Tex.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared Jno. W. Brady, County Attorney of Travis County, Texas, who, after being by me duly sworn on his oath, says that the facts stated in the foregoing application are true, except where stated upon information and belief, and where so stated he verily believes them to be true.

JNO. W. BRADY.

Sworn to and subscribed before me on this the 1st day of June, A. D. 1907.

[SEAL.] ROSE LITTMAN,
Notary Public, Travis Co. Tex.

580 AUSTIN, TEXAS, *June* 1, 1907.

In Chambers:

The above application for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, being presented to me, it is hereby set down for hearing on the 8th day

of June, 1907, at 10 o'clock A. M. at the Court House in Travis County, Texas, and the Clerk will issue a notice to the defendant accordingly. Upon consideration, the application for a temporary injunction pending the hearing of said application is hereby granted, and the Clerk of this Court is instructed to issue such temporary injunction under his hand and the seal of court, restraining and prohibiting the defendant, its officers, agents, attorneys and employees, or any of them, from removing beyond the State of Texas any of the property or assets of the defendant until the further orders of this Court.

V. L. BROOKS,
Judge 26th Judicial District of Texas.

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Application for a Receiver. Filed June 1st, 1907, D. J. Pickle, Clerk, by J. A. Belger, Deputy.

581 And be it further remembered that on Friday, June 7th, 1907, defendant's motion for a new trial was taken up, argued and considered by the Court and on said day was overruled, to which action and ruling the defendant in open court excepted, and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas; and said defendant thereupon, on said June 7th, 1907, tendered and placed in the hands of D. J. Pickle, the Clerk of said Court, on appeal bond with the American Surety Company of New York as its sole surety, which said bond is in words and figures as follows:

"THE STATE OF TEXAS, *County of Travis:*

"Whereas, in a certain cause pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas was plaintiff and the Waters Pierce Oil Company was defendant, and numbered 24,551 on the docket of said Court, a judgment was on June 1st, 1907, rendered by said court in favor of the plaintiff, the State of Texas, and against the defendant, the Waters Pierce Oil Company for the sum of One Million, Six Hundred and twenty-three thousand, and nine hundred ($1,623,900.00) Dollars, and for costs of suit, and cancelling the permit of said defendant, the Waters Pierce Oil Company, to do business in the State of Texas; and, whereas, said defendant, the Waters Pierce Oil Company, has appealed from said judgment to the Court of Civil Appeals of the Third Supreme Judicial District of Texas, and desires to suspend the execution of such judgment pending such appeal;

Now, Therefore, know all men by these presents, that we, the said Waters Pierce Oil Company, as principal and — American Surety Company of New York, as surety, do hereby acknowledge ourselves bound to pay to the State of Texas the sum of
582 Three Million and Two Hundred and Seventy Five Thousand ($3,275,000.00) Dollars, conditioned that said Waters

Pierce Oil Company shall prosecute its said appeal with effect, and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against it, it shall perform its judgment, sentence or decree, and pay all such damages as said Court may award against it.

"Witness our hands this 7th day of June, A. D. 1907.

WATERS PIERCE OIL COMPANY,
By R. L. PENN, *Att'y in Fact.*
AMERICAN SURETY COMPANY OF NEW YORK,
By JAS. E. LUCY, *Res. Vice President,*
[L. S.] By W. T. DECHARD, *Res. Ass't Secretary.*"

And be it further remembered that on Saturday, June 8th, 1907, at 10:00 o'clock A. M. and in open Court the Honorable V. L. Brooks, Judge, announced that the time for consideration of the application for the appointment of a receiver, above copied, had been reached, and the same was then called for consideration, whereupon the defendant, by its attorneys, stated that before considering said application they desired to call to the attention of the court the fact that they had tendered their supersedeas appeal bond, above copied, and that they desired to know the action of the Clerk as to whether he would approve or reject said bond, and thereupon, said Clerk, by written motion, requested instructions or advice from the Court as to whether said bond was legally sufficient and as to whether he was authorized to approve the same with the said single surety thereon, and thereupon the Court stated that before considering said application for a receiver he would consider the Clerk's request for advice, without assuming to have any power to dictate or control his action in approving or rejecting said bond, and
583 after argument of counsel for the State and defendant as to the sufficiency of said bond because of the admitted fact on the part of defendant that the said American Surety Company of New York was a bonding company chartered under the laws of another State and only had as assets within this State the $50,000.00 required to be deposited with the State Treasurer, as required by Article 734 of the Revised Statutes of the State of Texas, and after the said Judge gave advice to the said Clerk and without directing him to approve or reject said bond, the Clerk made known his refusal to accept said bond, and thereupon the defendant, by its counsel, requested a postponement of the further consideration of the said application for a receiver for a period of two weeks to allow it a reasonable time to procure other sureties and to give a supersedeas bond in connection with its appeal from the judgment rendered against it, and after full argument by both parties upon said application for postponement, and the propriety and authority of the Court to appoint a Receiver, the Court announced that he would take the matter under advisement until 10:00 o'clock on Monday morning, June 10th, 1907.

And be it further remembered that on said June 10th, 1907, at the hour of 10:00 o'clock A. M. the Court announced its ruling

refusing to grant the postponement of the consideration of said application for a receiver and again called the same for consideration and action, and thereupon, defendant, by its counsel, read its answer and response to said application, same being in words and figures as follows:

584 In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS-PIERCE OIL CO.

Now comes the defendant in the above entitled and numbered cause, by its attorneys, and excepts to the application filed by the plaintiff herein on June 1st, 1907, for the appointment of a receiver of the property and assets of this defendant, and says that said application is insufficient in law, and shows no sufficient cause for the appointment of such Receiver, and of this defendant prays judgment of the Court.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Def't.

And for answer to said application, defendant denies all and singular the allegations therein contained.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Def't.

And for further answer to said application and for the purpose of replying to the portion thereof relating to the said suit pending in the State of Missouri, defendant says that it is not true, as stated in said application, that the recommendation- of said Commissioner have the force and effect of a judgment forfeiting the charter of this defendant, but, on the contrary, no judgment has been
585 rendered in said cause in said Supreme Court of Missouri, and said report of said Commissioner does not have the effect of a judgment, but that said report and recommendations of said Commissioner may be either approved or rejected by said Supreme Court of Missouri, and will have no force or effect unless confirmed and approved by said Supreme Court of Missouri.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Before me, the undersigned officer, on this day personally appeared D. W. Odell and R. L. Penn, who each being by me duly sworn on oath deposes and says: That he is one of the attorneys for defendant in the above entitled and numbered cause, and that the facts stated in the foregoing special plea are true as he is informed and verily believes.

(Signed) D. W. ODELL.
R. L. PENN.

Subscribed and sworn to before me by D. W. Odell and R. L. Penn, this 10th day of June, A. D. 1907.

D. J. PICKLE,
Clerk District Court of Travis County, Texas,
[L. S.] By E. HUPPERTZ, *Deputy.*

And be it further remembered that after reading the foregoing answer and response, counsel for defendant proceeded to argue its said general exception or demurrer to the said application for the appointment of a receiver, and at the conclusion of such
586 argument when counsel for the State started to argue the same, the Court announced that it was unnecessary for counsel for the State to make any further argument, and the Court thereupon proceeded to announce his conclusions with respect to said application and defendant's objections thereto, and stated that the Court would take judicial notice of the proceedings in the main case and of the rendition of judgment against the defendant for violating the anti-trust laws of the State, as charged against it in plaintiff's said second amended original petition, and that it had been found guilty of violating the said anti-trust laws on each and every day from the 1st day of June, 1900, to the 29th day of April, 1907, and that its permit to do further business in the State had been forfeited and cancelled by reason of said violations, and that defendant had since May 31, 1900, *had* been a member of an agreement which had its very existence in Texas, in violation of the Civil and Criminal laws of Texas, and that it has been and still is in possession of certain instrumentalities by means of which it, in violation of the public welfare and interests, intended to continue its violation of the law pending appeal from the judgment of conviction, and that the court would assume that the defendant would file its proper supersedeas bond from the said judgment of conviction, but that notwithstanding defendant's right to so file said supersedeas bond within the time provided by law, the Court was of the opinion that the Legislature had provided as a remedy or means of preventing defendant from the continued violation of the law, that a receiver should be appointed to take charge of its property and business and deprive it of the instrumentalities by which it had so violated the law, and would continue to violate the law; and that because of said statute and of the declared purpose of de-
587 fendant, speaking through its general counsel John D. Johnson, in newspaper interviews which had been brought to the attention of the Court, in which said Johnson had discussed the effect of the aforesaid judgment of conviction against defendant, and

had declared the purpose of defendant to appeal from said judgment of conviction and to continue to carry on its business in the same manner that it had theretofore done, notwithstanding such judgment of conviction; and without any evidence being submitted to the court in connection with said application, the court thereupon announced that it would grant the said application and appoint a receiver as therein prayed for, and that the Court had made up its mind as to the gentleman so to be appointed receiver, and would invite counsel for the State and for defendant to his room, where he would disclose the name of the gentlemen so determined upon, and give to counsel for both sides an opportunity to present any objections which they might have to the gentleman so determined upon, to which action of the court, and before the Judge left the bench and retired to his room for the conference aforesaid, the defendant, by its attorneys, in open Court, then and there excepted and gave notice of appeal from the action of the court to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, and thereupon the Court caused an order to be prepared and entered of record evidencing its action in granting the application of the State for the appointment of a receiver aforesaid, which said order is in words and figures as follows:

"24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

"And now on this the 10th day of June, 1907, at a regular term of this court, there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation pend-
588 ing the further disposition of this cause, and the Court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all of the property and assets of the defendant, the Waters Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this Court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the court may direct, keeping and preserving the property coming into his custody and carrying on the business and supplying oil to the public in the State of Texas; that the temporary injunction heretofore granted, prohibiting defendant from moving any of its property and assets beyond the limits of the State of Texas be. and the same is hereby continued in force until the further orders of this court.

"To all of which action the defendant in open court, excepts, and in open court give- notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas."

And be it further remembered that after the proceedings aforesaid had taken place in the manner above recited, the Honorable V. L. Brooks, Judge of said Court, did announce to counsel that he had determined upon the selection of Robert J. Eckhardt to be receiver, and was willing to hear any objections that might be urged against his appointment, and, at the request of defendant's counsel, the matter of the final order naming the said Eckhardt as receiver was postponed until June 13th, 1907, and on said last mentioned date the court, did make its order naming said Robert J. Eckhardt as receiver, and caused the same to be entered of record in
589 words and figures as follows:

"No. 24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

"On this the 10th day of June, A. D. 1907, in this cause an order was made and entered by this Court granting the application of the plaintiff, the State of Texas, for the appointment of a receiver herein, the court at the time of the making of said order naming as receiver Robert J. Eckhardt and time being given both parties to urge any objection they might have to said Eckhardt, as such receiver, and no objection having been made to said Eckhardt, the Court now on this 13th day of June, 1907, confirming said order and in pursuance thereof names and appoints as receiver herein of the property in said order described said Robert J. Eckhardt with the duties and powers therein named and fixes the amount of his bond as such receiver at ($250,000.00) Two Hundred and Fifty Thousand Dollars;

"And defendant renews its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin."

To which action of the Court at the time said order was entered defendant excepted and again gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

And be it further remembered that thereafter on the 15th day of June, A. D. 1907, the defendant having tendered to the Clerk of this Court another supersedeas appeal bond from the main judgment rendered against it on June 1st, 1907, with the American Surety Company of New York and John H. Kirby as its sureties thereon, and before the approval of said bond, as hereinafter recited, the court caused the following amendment to the above recited orders of June 10th and June 13th, 1907, to be entered, which
590 said order directing said amendment of said order was made over the objections of the defendant, and to the action of the court, in so amending said orders defendant then and there excepted and again gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, which said amendment is in words and figures as follows:

In District Court, Travis County, Texas.

June 15th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

And now on this 15th day of June, A. D. 1907, at a regular term of this Court, it is considered, ordered, adjudged and decreed by the Court that the orders of this Court made and entered in said cause on the 10th day of June, A. D. 1907, and the 13th day of June, A. D. 1907, be so amended as to hereafter read as follows:

And now on this 10th day of June, 1907, at a regular term of this Court, there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation pending the further disposition of this cause, and the Court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all the property and assets of the defendant, the Waters Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this court, and said receiver is hereby directed and instructed to continue and carry on the business of the defend-
591 ant until such future time as the Court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the Public in the State of Texas, with the rights, power, and authority to continue the various clerks, servants, and agents of every class and grade now in the employ of the defendant or to discharge them and employ others at his discretion and to require such bonds and security to himself as Receiver from any of the present employees of those hereafter engaged by him as he may think expedient and proper; and to sell the present stock of oil and other products and personal property in the hands of the defendant and which may come into his hands as receiver and to purchase and sell other oil, products and personal property in the regular course of business of the defendant to the same effect as the defendant could or might have done in the continuation of said business so that said business may be kept up to its present condition as near as may be; and the said Receiver shall have power, under the control of the Court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to insure the same against loss and destruction by fire or otherwise as he may deem proper, to receive rents, collect, compound for, compromise demands, employ one or more attorneys at law, make transfers and generally to do such acts respecting the property as the Court may authorize and

all the expenses of said receivership including taxes, insurance premiums, attorney's fees, his own compensation and all expenses of said receivership to be paid as a part of the Court costs of the suit. That the temporary injunction heretofore granted, prohibiting the defendant from removing any of its property and assets beyond the limits of the State of Texas, be, and the same, is hereby continued in force until the further orders of this Court;

592 To all of which action the defendant in open court excepts, and in open Court gives notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas.

And on this 13th day of June, A. D. 1907, the Court confirming said order and in pursuance thereof names and appoints as Receiver herein of the property in said order described Robert J. Eckhardt, who is a resident citizen of the County of Williamson, in the State of Texas, with the duties and powers therein names, and fixes the amount of his bond as such Receiver at ($250,000.00) Two Hundred and Fifty Thousand Dollars, to be made payable to the Judge of this Court, and his successors in office, for the use of all parties interested in said property and this suit.

And defendant renewed its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin.

And be it further remembered that after the entry of said amended orders aforesaid, the Clerk of this Court, duly approved and filed defendant's said supersedeas appeal bond last above mentioned, and the same is in words and figures as follows:

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

Know All Men by These Presents:

That, whereas, in the above entitled and numbered cause in the District Court of Travis County, State of Texas, twenty-sixth Judicial District, a judgment was rendered in behalf of the plain-

593 tiff, the State of Texas, against the defendant, the Waters Pierce Oil Company, in words and figures as follows, to-wit:

In District Court, Travis County, Texas.

June 1st, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL CO.

And now on this the 20th day of May, 1907, the above cause coming on for trial, both parties appeared by Attorneys, and announced

ready, and a jury having been demanded, a jury of twelve good and lawful men were duly impaneled and sworn to try the case, and thereafter the case proceeded to trial, when by agreement of all parties on the 24th day of May, 1907, one of the Jurors, Aaron Davis, theretofore selected, was excused on account of sickness, which disabled him from acting as a juror in the cause, and the trial then proceeded before the Court and the eleven jurors theretofore selected and sworn, and the case continued on trial from day to day, and after all the pleadings, evidence and argument of counsel had been submitted to the jury, and after being duly charged by the Court, the jury retired in the custody of the proper officer to consider of their verdict, and thereafter on the 1st day of June, 1907, they returned into open Court the following verdict:

"AUSTIN, TEXAS, *June* 1, 1907.

"We the Jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties 1,549,500.00 dollars.

And we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty eight days and fix the penalties at seventy four thousand four hundred dollars.

594 We further find that the permit of the defendant to do business in the State of Texas should be canceled.

We find for defendant upon all issues made by the pleadings and not submitted in the charge of the Court.

W. T. HART, *Foreman.*
W. J. CRISWELL.
G. A. BERGSTROM.
J. C. BRODIE.
L. B. STUBBS.
W. W. CHILDRESS.
W. T. THOMPSON.
H. E. TOWNSEND.
J. C. GRINDSTAFF.
EARNEST GOWER.
CHAS. KROHN."

which verdict was by the Court received, ordered filed and made a part of the record of this cause.

It is therefore, considered, ordered, adjudged and decreed that the plaintiff, The State of Texas, do have and recover of and from the defendant, The Waters Pierce Oil Company, a corporation, the sum of ($1,623,900.00) One Million, Six Hundred and twenty-three thousand nine hundred dollars, together with interest thereon from this date at the rate of six per cent. per annum, together with all costs of suit, for which execution may issue;

It is further ordered, adjudged and decreed that the permit of the defendant, The Waters Pierce Oil Company, to do business in the

State of Texas, be, and the same is, hereby cancelled and held for naught, and that the said defendant be enjoined and prohibited from doing business in the State of Texas, except interstate business, but all other business it is hereby perpetually enjoined and prohibited from transacting within the State of Texas.

595 THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court in and for said County and State, do hereby certify that the within and foregoing is a true and correct copy of the Judgment in cause No. 24,551, The State of Texas *vs.* Waters Pierce Oil Company, as same appears of record in Minute Book 12, page 349, *et seq.*, of the records of this office.

Given under my hand and seal of office, at Austin, Texas, this the 14th day of June, A. D. 1907.

[SEAL.]

D. J. PICKLE,
Clerk District Court, Travis County, Texas.
By J. A. BELGER, *Deputy.*

And, Whereas, the defendant in said cause duly filed its motion for a new trial, which said motion was by the Court overruled and refused by order and judgment entered on the 7th day of June, A. D. 1907, and the said defendant then and there in open Court excepted and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

And, Whereas, the defendant desires to perfect its said appeal and supersede the judgment aforesaid pending its appeal;

Now, Therefore, we, the said Waters Pierce Oil Company, defendant aforesaid and appellant, as principal, and The Amer-
596 can Surety Company of New York, a corporation duly qualified and authorized to execute this bond, as surety, together with Jno. H. Kirby, as further surety herein, do hereby each acknowledge ourselves indebted, held and firmly bound to pay to the State of Texas, plaintiff aforesaid and appellee herein, the full sum of Three Million, Two Hundred and Seventy-five Thousand ($3,275,000.00) Dollars, conditioned that the said appellant, the Waters Pierce Oil Company, shall prosecute its appeal with effect, and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against it, it shall perform its judgment, sentence or decree, and pay all such damages as said court may award against it.

In witness of all which the said Waters Pierce Oil Company causes this bond to be executed by T. B. Cochran, its agent and attorney at law and in fact, and the said The American Surety Company of New York, causes this bond to be executed by J. E. Lucy, its Resident Vice President and duly appointed agent and attorney in fact,

and the said Jno. H. Kirby, execute the same in his own proper person, this 15th day of June, A. D. 1907.

THE WATERS PIERCE OIL COMPANY,
By T. B. COCHRAN,
Attorney at Law and in Fact.

[SEAL.] THE AMERICAN SURETY COMPANY OF NEW YORK,
By JAS. E. LUCY,
Resident Vice President and Agent.

Attest:
W. T. DECHARD,
Resident Assistant Secretary.

JNO. H. KIRBY.

Approved June 15, 1907.
D. J. PICKLE, *Clerk.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Appeal Bond No. 1. Filed June 15, 1907, D. J. Pickle, Clerk.

597 Be it further remembered that on June 15th, 1907, the court made and entered its order fixing the amount of bond which defendant was required to give in order to perfect its said appeal from the orders appointing a receiver and supersede the said orders so appointing a receiver at the sum of $100,000.00; and thereupon, defendant tendered and placed in the hands of the Court its supersedeas appeal bond in said sum last named, with the American Surety company of New York and John H. Kirby as its sureties, and the Court having announced its refusal to consider said bond at said time and its purpose to postpone the further consideration thereof until the succeeding Wednesday morning, June 19, 1907, at 10:00 o'clock, defendant at the time of such refusal to consider said bond and the postponement thereof excepted to the action of the Court.

Be it further remembered that on said 19th of June, 1907, at the hour of 10:00 o'clock, the court having announced that it would consider the matter of the approval of the receiver's bond of Robert J. Eckhardt, receiver, which had been tendered to him on the —— day of June, A. D. 1907, and would also consider the matter of the approval of defendant's said supersedeas appeal bond so tendered to him on June 18th, 1907, the defendant in open Court objected to the consideration and approval of the receiver's bond before acting upon its said appeal bond, which had been first placed with the Court, and for the additional reason that as defendant had duly filed with the Clerk of this Court its said supersedeas appeal bond from the main judgment of June 1st, 1907, the Court was without authority or jurisdiction to make any further orders with respect to said receivership or to approve said receiver's bond, which said objection was then and there overruled and defendant in open
598 court excepted, and thereupon the court proceeded and first entered its order of approval of the said receiver's bond, and,

after so approving the same, did enter its order approving defendant's said supersedeas appeal bond so placed with the Court on June 15th, 1907, to which action of the court at the time defendant excepted; and defendant having announced to the court its desire to submit this said last mentioned supersedeas appeal bond to the Clerk for his approval, the Court directed the Clerk to first consider the bond of the receiver before approving defendant's said bond, to which action of the Court in so directing the Clerk defendant excepted.

And defendant now tenders this its bill of exceptions to all matters connected with the appointment of a receiver, as hereinbefore recited, and prays that this bill be signed and ordered filed as part of the record in this proceeding.

Examined and allowed.

V. L. BROOKS,
Judge, 26th Judicial District.

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Defendant's Bill of Exceptions to Orders and Proceedings in Reference to Receivership. Filed June 29, 1907. D. J. Pickle, Clerk.

599 *Appeal Bond—In Receivership.*

Filed June 15th, 1907.

In the District Court of Travis County, State of Texas, Twenty-sixth District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

Know all men by these presents that, whereas in the above entitled case in the District Court of Travis County, State of Texas, Twenty-sixth Judicial District, before the Hon. V. L. Brooks, Judge presiding, the following orders, judgments and proceedings were had and duly entered of record, namely:

In District Court, Travis County, Texas.

June 10th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

And now on this the 10th day of June, 1907, at a regular term of this Court, there came on to be heard the application of the State of

Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation pending the further disposition of this cause, and the Court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all of the property and assets of the defendant, the Waters Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the
600 further orders of this Court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the Court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the public in the State of Texas; that the temporary injunction, heretofore granted, prohibiting the defendant from moving any of its property and assets beyond the limits of the State of Texas, be, and the same is hereby continued in force until the further orders of this Court.

To all of which action the defendant in open Court excepts and in open court give notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas.

In District Court, Travis County, Texas.

June 13th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

On this the 10th day day of June, A. D. 1907, in this cause an order was made and entered by this Court granting the application of the plaintiff, The State of Texas, for the appointment of a receiver herein, the Court at the time of the making of said order naming as receiver Robert J. Eckhardt and time being given both parties to urge any objection they might have to said Eckhardt as such receiver, and no objection having been made to said Eckhardt, the Court now on this 13th day of June, 1907, confirming said order and in pursuance thereof names and appoints as Receiver herein of the property in said order described said Robert J. Eckhardt with the duties and powers therein named and fixes the amount of his bond as such receiver at ($250,000.00) Two Hundred and fifty thousand dollars;

601 And defendant renews its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin.

THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court, within and for the County and State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of Orders of Court appointing Receiver in cause No. 24,551, The State of Texas *vs.* Waters Pierce Oil Company, as the same appear of record in this office.

Given under my hand and seal of office, at Austin, Texas, this the 13th day of June, A. D. 1907.

[SEAL.]

D. J. PICKLE,
Clerk District Court, Travis County, Texas.

And, Whereas, the said defendant, Waters Pierce Oil Company, having duly excepted to the action of the Court in making said orders and judgments, and given notice of appeal therefrom to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas, and the said V. L. Brooks, Judge presiding, having fixed the amount of the appeal bond required to be given by said Waters Pierce Oil Company at the sum of One Hundred Thousand Dollars, and said Company desiring to perfect its said appeal and supersede and suspend said orders and judgments as provided by law;

602 Now, therefore, we, the said Waters Pierce Oil Company, appellant, as principal, and The American Surety Company of New York and Jno. H. Kirby, as sureties, do hereby acknowledge ourselves indebted, held and firmly bound to pay to the State of Texas, appellee, the full sum of One Hundred Thousand Dollars, conditioned that the said Waters Pierce Oil Company, appellant, shall prosecute its appeal with effect, and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against it, it shall perform its judgment, sentence or decree and pay all such damages as said Court may award against it, and further conditioned that the said Waters Pierce Oil Company, appellant, shall, in case the judgment is affirmed, pay to the State of Texas, appellee, the value of the rent or hire of all such property embraced in the orders and judgments aforesaid in any suit which may be brought therefor.

In witness of all which the said Waters Pierce Oil Company causes this bond to be executed by T. B. Cochran, its agent and attorney at law and in fact, and the said The American Surety Company of New York causes this bond to be executed by J. E. Lucy, its Resident Vice President and duly appointed agent and attorney in fact, and said Jno. H. Kirby execute the same in *their* own proper person, this the 15th day of June, A. D. 1907.

THE WATERS PIERCE OIL COMPANY,
By T. B. COCHRAN,
Agent, Attorney at Law and in Fact.

[SEAL.]

THE AMERICAN SURETY COMPANY OF NEW YORK,
By JAS. E. LUCY,
Resident Vice President and Agent.

603 Attest:

W. T. DECHARD,
Resident Assistant Secretary.

JNO. H. KIRBY.

Examined, approved and ordered filed by the undersigned this 19th day of June, 1907, at 10:33 o'clock A. M.

V. L. BROOKS, *Judge.*

Approved June 10, 1907, 10.36 A. M.
D. J. PICKLE, *Clerk.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Appeal Bond No. 2. Filed June 19, 1907. D. J. Pickle, Clerk.

604 *Assignment of Errors in Main Case.*

Filed July 20, 1907.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

Suit Pending in the 26th Judicial District Court of Travis County, Texas.

Now comes the defendant in the above entitled cause, and, as required by law, files herein its assignments of errors committed by the trial court in this cause, as follows:

1. The Court erred in overruling the defendant's first exception, in the nature of a plea in abatement, to plaintiff's petition.

2. The Court erred in overruling defendant's second exception, in the nature of a plea in abatement, to plaintiff's petition.

3. The Court erred in overruling defendant's third exception, in the nature of a plea in abatement, to plaintiff's petition.

4. The Court erred in overruling defendant's fourth exception, in the nature of a plea in abatement, to plaintiff's petition.

5. The Court erred in overreling defendant's general demurrer to plaintiff's petition.

6. The Court erred in overruling defendant's first special exception to plaintiff's petition.

605 7. The Court erred in overruling defendant's second special exception to plaintiff's petition.

8. The Court erred in overruling defendant's third special exception to plaintiff's petition.

9. The Court erred in overruling defendant's fourth special exception to plaintiff's petition.

10. The Court erred in overruling defendant's fifth special exception to plaintiff's petition.

11. The Court erred in overruling defendant's special exception No. 6 to plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of the protection of that part of the 14th Amendment to the Constitution of the United States providing that no state shall deprive any person of

property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon, by the defendant.

12. The Court erred in overruling the defendant's special exception No. 7 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of the protection of that part of the 14th Amendment to the Constitution of the United States providing that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

13. The Court erred in overruling the defendant's special exception No. 8 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit
606 of the protection of that part of the 14th Amendment to the Constitution of the United States providing that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

14. The Court erred in overruling the defendant's special exception No. 9 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of the protection of that part of Subdivision 1 of Section 10 of Article 1 of the Constitution of the United States, which prescribed that no state shall pass any *ex post facto* law, or law impairing the obligation of contracts, and thereby also rendered unavailable to the defendant, and denied to the defendant the benefit of the protection of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law, all of which provisions of the Constitution of the United States and of the 14th Amendment thereto were relied upon by the defendant in said special exception, and are still relied upon by the defendant.

15. The Court erred in overruling the defendant's special exception No. 10 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of, the protection of Subdivision 3 of Section 8 of Article 1 of the Constitution of the United States, which gives Congress the power to regulate commerce with foreign nations and among the several states, and of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall de-
607 prive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which provisions of the Constitution of the United States and of the 14th Amendment thereto were relied upon by the defendant in said special exception, and are still relied upon by the defendant.

16. The Court erred in overruling defendant's eleventh special exception to plaintiff's petition.

17. The Court erred in overruling defendant's special exception No. 12 to the plaintiff's petition, and thereby rendered unavailable to defendant, and denied to defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of liberty or property without due process of law, which provision of said 14th Amendment was relied upon in said special exception and is still relied upon by the defendant.

18. The Court erred in overruling defendant's special exception No. 13 to the plaintiff's petition, and thereby rendered unavailable to defendant, and denied to defendant the benefit of, the protection of Subdivision 3 of Section 8 of Article 1 of the Constitution of the United States, which gives Congress the power to regulate commerce with foreign nations and among the several states, which provision of the Constitution of the United States was relied upon in said exception, and is still relied upon, by the defendant.

19. The court erred in overruling defendant's special exception No. 14 to plaintiff's petition.

20. The Court erred in overruling defendant's special exception No. 15, to plaintiff's petition.

21. The Court erred in overruling the defendant's special exception No. 16 to the plaintiff's petition, and thereby rendered unavailable to defendant, and denied to defendant the bene-
608 fits of, the protection of that part of the 14th Amendment of the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon, by the defendant.

22. The Court erred in overruling defendant's special exception No. 17 to the plaintiff's petition.

23. The Court erred in overruling defendant's special exception No. 18 to the plaintiff's petition.

24. The Court erred in overruling the defendant's special exception No. 19 to plaintiff's petition.

25. The Court erred in overruling defendant's special exception No. 20 to plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to defendant the benefit of, the protection of Subdivision 1 of Section 10 of Article 1 of the Constitution of the United States, which provides that no state shall pass any law impairing the obligation of contracts, and also of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which provisions of the Constitution of the United States and of the 14th Amendment thereto were relied upon, and are still relied upon, by the defendant.

26. The Court erred in overruling defendant's special exception No. 21 to the plaintiff's petition, and thereby rendered unavailable to defendant, and denied to defendant the benefit of, the protection

of Subdivision 1 of Section 10 of Article 1 of the Constitution of the United States, which provides that no state shall pass any law
609 impairing the obligation of contracts, and also rendered unavailable to defendant, and denied to defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws which provisions of the Constitution of the United States and of the 14th Amendment thereto were relied upon, by the defendant.

27. The Court erred in overruling defendant's special exception No. 22 to the plaintiff's petition.

28. The Court erred in overruling defendant's special exception No. 23, to the plaintiff's petition.

29. The Court erred in overruling the defendant's special exception No. 24 to the plaintiff's petition.

30. The Court erred in overruling the defendant's special exception No. 25 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which provisions of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

31. The Court erred in overruling the defendant's special exception No. 26 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, nor deny to any
610 person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon, by the defendant.

32. The Court erred in overruling the defendant's special exception No. 27 to the plaintiff's petition.

33. The Court erred in overruling the defendant's special exception No. 28 to the plaintiff's petition.

34. The Court erred in overruling the defendant's special exception No. 29 to the plaintiff's petition

35. The Court erred in overruling the defendant's special exception No. 30 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States, which provides that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

36. The Court erred in overruling the defendant's special exception No. 31 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of, the pro-

tection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property with- due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment to the Constitution of the United States was relied upon in said special exception, and is still relied upon by the defendant.

37. The Court erred in overruling the defendant's special exception No. 32, to the plaintiff's petition.

611 38. The Court erred in overruling the defendant's special exception No. 33 to the plaintiff's petition.

39. The Court erred in overruling the defendant's special exception No. 34 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

40. The Court erred in overruling the defendant's special exception No. 35, to the plaintiff's petition.

41. The Court erred in overruling the defendant's special exception No. 36, to the plaintiff's petition.

42. The Court erred in overruling the defendant's special exception No. 37 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon, by the defendant.

43. The Court erred in overruling the defendant's special exception No. 38 to the plaintiff's petition.

44. The Court erred in overruling the defendant's special exception No. 39 to the plaintiff's petition.

45. The Court erred in overruling the defendant's special exception No. 40 to the plaintiff's petition, and thereby rendered un-

612 available to the defendant, and denied to the defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

46. The Court erred in overruling the defendant's special exception No. 41 to the plaintiff's petition.

47. The Court erred in overruling the defendant's special exception No. 42 to the plaintiff's petition.

48. The Court erred in overruling the defendant's special exception No. 43 to the plaintiff's petition.

49. The Court erred in overruling the defendant's special exception No. 44 to the plaintiff's petition, and thereby rendered unavailable

to the defendant, and denied to the defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no State shall deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

50. The Court erred in overruling the defendant's special exception No. 45 to the plaintiff's petition.

51. The Court erred in overruling the defendant's special exception No. 46 to the plaintiff's petition.

52. The Court erred in overruling the defendant's special exception No. 47 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of; the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any
613 person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

53. The Court erred in overruling the defendant's special exception No. 48 to the plaintiff's petition.

54. The Court erred in overruling Subdivision *a* of defendant's special exception No. 48 to plaintiff's petition.

55 *55*. The Court erred in overruling Subdivision *b* of defendant's special exception No. 48 to plaintiff's petition.

56. The Court erred in overruling Subdivision *c* of defendant's special exception No. 48 to plaintiff's petition.

57. The Court erred in overruling Subdivision *d* of defendant's special exception No. 48 to plaintiff's petition.

58. The Court erred in overruling Subdivision *e* of defendant's special exception No. 48 to plaintiff's petition.

59. The Court erred in overruling Subdivision *f* of defendant's special exception No. 48 to plaintiff's petition.

60. The Court erred in overruling Subdivision *g* of defendant's special exception No. 48 to plaintiff's petition.

61. The Court erred in overruling Subdivision *h* of defendant's special exception No. 48 to plaintiff's petition.

62. The Court erred in overruling Subdivision *i* of defendant's special exception No. 48 to plaintiff's petition.

63. The Court erred in overruling defendant's special exception No. 49 to the plaintiff's petition.

64. The Court erred in overruling Subdivision *a* of defendant's special exception No. 49 to plaintiff's petition.

65. The Court erred in overruling Subdivision *b* of defendant's special exception No. 49 to plaintiff's petition.

66. The Court erred in overruling Subdivision *c* of defendant's special exception No. 49 to Plaintiff's petition.

614 67. The Court erred in overruling Subdivision *d* of defendant's special exception 49 to plaintiff's petition.

68. The Court erred in overruling Subdivision *e* of defendant's special exception No. 49 to plaintiff's petition.

69. The Court erred in overruling Subdivision *f* of defendant's special exception *of* 49 to plaintiff's petition.

70. The Court erred in overruling Subdivision *g* of defendant's special exception No. 49 to plaintiff's petition.

71. The Court erred in overruling Subdivision *h* of defendant's special exception No. 49 to plaintiff's petition.

72. The Court erred in overruling Subdivision *i* of defendant's special exception No. 49 to plaintiff's petition.

73. The Court erred in overruling defendant's special exception No. 50 to plaintiff's petition.

74. The Court erred in overruling defendant's special exception No. 51 to plaintiff's petition.

75. The Court erred in overruling the defendant's special exception No. 52 to plaintiff's petition, and thereby rendered unavailable to defendant, and denied to defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, which provisions of said 14th Amendment was relied upon in said special exception, and is still relied upon, by the defendant.

76. The Court erred in overruling the defendant's special exception No. 53 to the plaintiff's petition, and thereby rendered unavailable to defendant, and denied to defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, which provision of said 14th
615 Amendment was relied upon in said special exception, and is still relied upon by the defendant.

77. The Court erred in overruling defendant's special exception No. 54 to plaintiff's petition.

78. The Court erred in overruling defendant's special exception No. 55 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

79. The Court erred in overruling defendant's special exception No. 56 to the plaintiff's petition.

80. The Court erred in overruling defendant's special exception No. 57 to plaintiff's petition.

81. The Court erred in overruling defendant's special exception No. 58 to plaintiff's petition.

82. The Court erred in overruling defendant's special exception No. 59 to plaintiff's petition.

83. The Court erred in overruling defendant's special exception No. 60 to plaintiff's petition.

84. The Court erred in overruling defendant's special exception No. 61 to plaintiff's petition.

85. The Court erred in overruling defendant's special exception No. 62 to plaintiff's petition.

86. The Court erred in overruling defendant's special exception No. 63 to plaintiff's petition.

87. The Court erred in overruling defendant's special exception No. 64 to plaintiff's petition.

616 88. The Court erred in overruling defendant's special exception No. 65 to plaintiff's petition.

89. The Court erred in overruling defendant's special exception No. 66 to plaintiff's petition.

90. The Court erred in overruling defendant's special exception No. 67 to plaintiff's petition.

91. The Court erred in overruling defendant's special exception No. 68 to plaintiff's petition.

92. The Court erred in overruling defendant's special exception No. 69 to plaintiff's petition.

93. The Court erred in overruling defendant's special exception No. 71 to plaintiff's petition.

94. The Court erred in overruling defendant's special exception No. 72 to plaintiff's petition.

95. The Court erred in overruling defendant's special exception No. 73 to plaintiff's petition.

96. The Court erred in overruling defendant's special exception No. 74 to plaintiff's petition.

97. The Court erred in overruling defendant's special exception No. 75 to plaintiff's petition.

98. The Court erred in overruling defendant's special exception No. 76 to plaintiff's petition.

99. The Court erred in overruling defendant's special exception No. 77 to plaintiff's petition.

100. The Court erred in overruling defendant's special exception No. 78 to plaintiff's petition.

101. The Court erred in overruling defendant's special exception No. 79 to plaintiff's petition.

102. The Court erred in overruling defendant's special exception No. 80 to plaintiff's petition.

103. The Court erred in overruling defendant's special exception No. 81 to plaintiff's petition.

617 104. The Court erred in overruling defendant's special exception No. 82 to plaintiff's petition.

105. The Court erred in overruling defendant's special exception No. 83 to plaintiff's petition.

106. The Court erred in overruling defendant's special exception No. 84 to plaintiff's petition.

107. The Court erred in overruling defendant's special exception No. 85 to plaintiff's petition.

108. The Court erred in overruling defendant's special exception No. 86 to plaintiff's petition.

109. The Court erred in overruling defendant's special exception No. 87 to plaintiff's petition.

110. The Court erred in overruling defendant's special exception No. 88 to plaintiff's petition .

111. The Court erred in overruling defendant's special exception No. 89 to plaintiff's petition.

112. The Court erred, upon the hearing of defendant's application for a change of venue herein, in refusing to allow this defendant to prove by the witness, C. J. Johnson, the facts which it offered to prove by said witness, and which were excluded by the Court, as shown by defendant's bill of exceptions No. 5, herein.

113. The Court erred, upon the hearing of defendant's application for a change of venue herein, in refusing to allow this defendant to prove by the witness, H. M. Metz, the facts which it offered to prove by said witness, and which were excluded by the Court, as shown by defendant's bill of exceptions No. 6, herein.

114. The Court erred in overruling defendant's application for a change of venue in this case, as shown by defendant's bill of exceptions No. 7, herein.

618. 115. The Court erred in overruling defendant's application for a change of venue in this case, for the reason that, upon the hearing of said application it was shown by both the preponderance of the evidence and the manifest weight of the evidence, that there existed in Travis County so great a prejudice against this defendant that it could not obtain a fair and impartial trial of this case in said County, as appears from defendant's bill of exceptions No. 7, herein.

116. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the Articles of Incorporation of the Standard Oil Company of Ohio, as shown on pages 2-4 of the stenographer's report.

117. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the charter of the Waters Pierce Oil Company filed in the office of the Secretary of State of the State of Missouri on May 1st, 1878, and the certified copy of the amendment thereto, as shown on pages 4-5 of the Stenographer's report.

118. The Court erred in admitting in evidence, over the objections of defendant, the copy of the "Standard Oil Trust Agreements" and the supplement thereto, copied and set out in plaintiff's petition as shown on pages 5-8 of the stenographer's report.

119. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the charter and amendment thereto, of the Standard Oil Company of New Jersey, incorporated under the laws of New Jersey, as shown on pages 8-12 of the stenographer's report.

120. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness, Ida M. Butts, to the seventh interrogatory propounded to her by plaintiff,
619 as shown on pages 13-17 of the stenographer's report.

121. The Court erred in admitting in evidence, over the objections of defendant, that portion of the answer of said witness to the seventh interrogatory propounded to her by plaintiff after the first sentence of said answer as shown on pages 13-17 of the stenographer's report.

122. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness, Ida M. Butts to the tenth interrogatory propounded to her by plaintiff, as shown on pages 18-21 of the stenographer's report.

123. The Court erred in admitting in evidence, over the objections of defendant Exhibit "B" attached to the deposition of said witness, Ida M. Butts, as shown on pages 22-23 of the stenographer's report.

124. The Court erred in admitting in evidence, over the objections of defendant, the Exhibits, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, attached to the deposition of the said witness, Ida M. Butts, as shown in pages 23-39 of the stenographer's report.

125. The Court erred in admitting in evidence, over the objection of defendant, the answer of the witness, Ida M. Butts, to the thirteenth interrogatory propounded to her by plaintiff, as shown on pages 39-40 of the stenographer's report.

126. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness, Ida M. Butts, to the fourteenth interrogatory propounded to her by plaintiff, as shown on page 40 of the stenographer's report.

620. 127. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness, Ida M. Butts, to the sixteenth interrogatory propounded to her by plaintiff, as shown on pages 41-42 of the stenographer's report.

128. The Court erred in admitting in evidence, over the objections of defendant, the second paragraph of the agreement being stipulation No. 1, between counsel for plaintiff and defendant, as shown on pages 43-46 of the stenographer's report.

129. The Court erred in admitting in evidence, over the objections of defendant, the third paragraph of the agreement being stipulation No. 1, between counsel for plaintiff and defendant, as shown on pages 43-46 of the stenographer's report.

130. The Court erred in admitting in evidence, over the objections of defendant, the fourth paragraph of the agreement, being Stipulation No. 1 between counsel for plaintiff and defendant, as shown on pages 43-46 of the stenographer's report.

131. The Court erred in admitting in evidence, over the objections of defendant, the fifth paragraph of the agreement, being Stipulation No. 1 between counsel for plaintiff and defendant, as shown on pages 43-46 of the stenographer's report.

132. The Court erred in admitting in evidence, over the objections of defendant, the sixth paragraph of the agreement, being Stipulation No. 1 between counsel for plaintiff and defendant, as shown on pages 43-46 of the stenographer's report.

133. The Court erred in admitting in evidence, over the objections of defendant, the seventh paragraph of the agreement, being Stipulation No. 1 between counsel for plaintiff and defendant, as shown on pages 43-46 of the stenographer's report.

134. The Court erred in admitting in evidence, over the objections of defendant, the eighth paragraph of the agreement, being
621 Stipulation No. 1 between counsel for plaintiff and defendant, as shown on pages 43-46 of the stenographer's report.

135. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the charter of the Standard Oil Company of Kentucky, as shown on pages 46-47 of the stenographer's report.

136. The Court erred in admitting in evidence, over the objections

of the defendant, the certified copy of the charter of the Standard Oil Company of Pittsburg, as shown on pages 47 of the stenographer's report.

137. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the Articles of Incorporation of the Standard Oil Company of Indiana, as shown on pages 47-48 of the Stenographer's report.

138. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the Articles of Incorporation the Standard Oil Company of Iowa, as shown on pages 48-49 of the stenographer's report.

139. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the Articles of Incorporation of the Standard Oil Company of New York, as shown on pages 49 of the stenographer's report.

140. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the charter of the Atlantic Refining Company, and the various amendments thereto, as shown on pages 49-51 of the stenographer's report.

141. The Court erred in admitting in evidence, over the objections of defendant, the portion of the deposition of the witness, R. H. McNall, set out on pages 51-52 of the Stenographer's report.

142. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness, E. M. Wilhoit, to the
622 sixth interrogatory propounded to him by plaintiff, as shown on page 53 of the stenographer's report.

143. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness E. M. Wilhoit, to the seventh interrogatory propounded to him by plaintiff, as shown on page 53 of the stenographer's report.

144. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness, E. M. Wilhoit, to the ninth interrogatory propounded to him by plaintiff, as shown on page 57 of the stenographer's report.

145. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness E. M. Wilhoit, to the tenth interrogatory propounded to him by plaintiff, as shown on pages 54-55 of the stenographer's report.

146. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness E. M. Wilhoit, to the twelfth interrogatory propounded to him by plaintiff, as shown on page 56 of the stenographer's report.

147. The Court erred in admitting in evidence, over the objections of defendant, the portion of the answer of the witness E. M. Wilhoit, to the twelfth interrogatory propounded to him by plaintiff, and reading, "I was instructed to not make any sales in the Indian Territory or Texas, as that was the territory of the Waters Pierce Oil Company," as shown on pages 56-67 of the stenographer's report.

148. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness E. M. Wilhoit, to the thirteenth interrogatory propounded to him by plaintiff, as shown on page 57 of the Stenographer's report.

149. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Chas. F. Hatfield, to the fifty interrogatory propounded to him by plaintiff, as shown on pages 58-59 of the stenographer's report.

623 150. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Chas. F. Hatfield, to the ninth interrogatory propounded to him by plaintiff, as shown on pages 59-60 of the stenographer's report.

151. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Chas. C. Hatfield, to the eleventh interrogatory propounded to him by plaintiff, as shown on pages 60-61 of the stenographer's report.

152. The Court erred in admitting in evidence, over the objections of defendant, the portion admitted of the answer of the witness Chas. F. Hatfield, to the twenty-second interrogatory propounded to him by plaintiff, as shown on pages 63-65 of the stenographer's report.

153. The Court erred in admitting in evidence, over the objections of defendant, the judgment rendered in the case of the State of Texas against the Waters Pierce Oil Company, in the District Court of Travis County, Texas, on June 15th, 1897, as shown on pages 65-66 of the stenographer's report.

154. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the affidavit purporting to show the dissolution of the Waters Pierce Oil Company, incorporated under the laws of Missouri, on May 7th, 1878, as shown on page 66 of the stenographer's report.

155. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the mandate of the Supreme Court of the United States in the case of the State of Texas *vs.* Waters Pierce Oil Company, as shown on page 69 of the stenographic report.

156. The Court erred in admitting in evidence, over the objections of defendant, that portion of the testimony of the

624 witness H. C. Pierce, in which he testified that when the Waters Pierce Oil Company incorporated in 1878, was organized it was agreed that the Waters Pierce Oil Company should confine its operations and transact its business within the territory in which Waters, Pierce & Company and H. C. Pierce & Company had transacted business, and wherein he undertook to describe such territory, as shown on pages 71-73 of the stenographer's report.

157. The Court erred in admitting in evidence, over the objections of defendant, that portion of the testimony of the witness H. C. Pierce, wherein he testified that the Waters Pierce Oil Company, incorporated in 1878, obtained its supplies almost exclusively from the Standard Oil Company, as shown on pages 73-74 of the stenographer's report.

158. The Court erred in admitting in evidence, over the objections of defendant, that portion of the testimony of the witness H. C. Pierce, wherein he testified that the Waters Pierce Oil Company obtained all of its crude petroleum for manufacturing in Mexico from the Standard Oil Company, as shown on pages 74-75 of the stenographer's report.

159. The Court erred in admitting in evidence, over the objections of the defendant, that portion of the testimony of the witness, H. C. Pierce, wherein he testified that the reason the Waters Pierce Oil Company did not contemplate doing business in Mansas City was because the original Waters Pierce Oil Company agreed that it would confine its operations to the territory in which it and its predecessors had transacted its business, as shown on pages 83-84 of the stenographer's report.

160. The Court erred in admitting in evidence, over the objections of defendant, that portion of the testimony of the witness H. C. Pierce, wherein he testified that upon the organization of the present Waters Pierce Oil Company he was informed by his
625 attorney that an agreement had been made that he should transfer 68½ per cent. of the stock to some unknown party, as shown on pages 87-88 of the stenographer's report.

161. The Court erred in admitting in evidence, over the objections of defendant, that portion of the testimony of the witness H. C. Pierce, wherein he testified that he was told by his attorney that he had made an agreement with the general counsel of the Standard Oil Company whereby, upon the organization of the present Waters Pierce Oil Company he (the witness) should transfer the same number of shares of stock to Mr. Pratt, of the Standard Oil Company, that the Standard Oil Company of New Jersey held in the old company, as shown on page 98 of the stenographer's report.

162. The Court erred in admitting in evidence, over the objections of defendant, that portion of the testimony of the witness H. C. Pierce, wherein he testified that according to his understanding, as he was informed by his attorney, the 2748 shares of stock referred to belonged to and was to be transferred to the Standard Oil Company, or its representatives, as shown on page 99 of the stenographer's report.

163. The Court erred in admitting in evidence, over the objections of defendant, and for the purpose stated by counsel for plaintiff when it was offered, the deposition of the witness, Wade Hamption, as shown on pages 180-218 of the stenographer's report.

164. The Court erred in admitting in evidence for the purpose for which the same was stated by counsel for plaintiff to be offered, and over the objections of defendant, the answer of the witness, Wade Hampton, to the twenty-fifth interrogatory propounded to him by plaintiff, as shown on pages 180-188 of the stenographer's report.

626 165. The Court erred in admitting in evidence, over the objections of defendant, all of the deposition of the witness, Wade Hampton, which was admitted in evidence after his answer to the twenty-fifth interrogatory for the purpose of which counsel for the State stated at the time that said portion of said deposition was offered, as shown on pages 180-218 of the stenographer's report.

166. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Maywood Maxon, to the tenth interrogatory propounded to him by plaintiff, as shown on pages 219-220 of the stenographer's report.

167. The Court erred in admitting in evidence, over the objection of defendant, the answer of the witness Maywood Maxon to the thirteenth interrogatory propounded to him by plaintiff, as shown on pages 220 of the stenographer's report.

168. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Maywood Maxon to the twenty-seventh interrogatory propounded to him by plaintiff, as shown on pages 222-223 of the stenographer's report.

169. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness G. J. Steigerwald to the sixth interrogatory propounded to him by plaintiff, as shown on pages 223-224 of the stenographer's report.

170. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness G. J. Steigerwald, to the thirteenth interrogatory propounded to him by plaintiff, as shown on page 225 of the stenographer's report.

171. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness, G. J. Steigerwald, to the fifteenth interrogatory propounded to him by plaintiff, as shown on page 225 of the stenographer's report.

627 172. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness G. J. Steigerwald, to the sixteenth interrogatory propounded to him by plaintiff, as shown on pages 225-226 of the stenographer's report.

173. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness G. J. Steigerwald, to the twenty-sixth interrogatory propounded to him by plaintiff, as shown on pages 228-229 of the stenographer's report.

174. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness G. J. Steigerwald, to the twenty-seventh interrogatory propounded to him by plaintiff, as shown on pages 230-231 of the stenographer's report.

175. The Court erred in admitting in evidence, over the objections of defendant, the deposition of the witness A. H. Gardner, as shown on pages 236-241 of the stenographer's report.

176. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness A. H. Gardner, to the eighteenth interrogatory propounded to him by plaintiff, as shown on pages 239-240 of the stenographer's report.

177. The Court erred in admitting in evidence, over the objections of defendant, the deposition of the witness Edward P. Pratt, as shown on pages 242-248 of the stenographer's report.

178. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Edward P. Pratt, to the twenty-seventh interrogatory propounded to him by plaintiff, as shown on pages 247-248 of the stenographer's report.

628 179. The Court erred in admitting in evidence, over the objections of defendant, the deposition of the witness, Anthony V. Jockel, as shown on pages 249-254 of the stenographer's report.

180. The Court erred in admitting in evidence, over the objec-

tions of defendant, the portion objected to by defendant of the answer of the witness Anthony V. Jockel, to the third interrogatory propounded to him by plaintiff, as shown on pages 249-250 of the stenographer's report.

181. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Anthony V. Jockel, to the twelfth interrogatory propounded to him by plaintiff, as shown on pages 252-253 of the stenographer's report.

182. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Francis D. Carley, to the fourth interrogatory propounded to him by plaintiff, as shown on pages 270-271 of the stenographer'n report.

183. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Francis D. Carley, to the sixth interrogatory propounded to him by plaintiff, as shown on pages 271-272 of the stenographer's report.

184. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Francis D. Carley, to the seventh interrogatory propounded to him by plaintiff, as shown on page 272 of the stenographer's report.

185. The Court erred in admitting in evidence, over the objections of defendant, the deposition of the witness W. N. Davis, as shown on pages 275-279 of the stenographer's report.

186. The Court erred in admitting in evidence, over the objections of defendant, the deposition of the witness William A. Morgan, as shown on pages 279-284 of the stenographer's report.

629 187. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness William A. Morgan, to the sixth interrogatory propounded to him by plaintiff, as shown on pages 281-282 of the stenographer's report.

188. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness William A. Morgan, to the seventh interrogatory propounded to him by plaintiff, as shown on page 282 of the stenographer's report.

189. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness William A. Morgan to the eighth interrogatory propounded to him by plaintiff, as shown on pages 282-283 of the stenographer's report.

190. The Court erred in admitting in evidence, over the objections of defendant, the deposition of the witness, H. R. Knollenberg, after his answer to the second interrogatory propounded to him by plaintiff, as shown on pages 285-290 of the stenographer's report.

191. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness H. R. Knollenberg to the tenth interrogatory propounded to him by plaintiff, as shown on page 287 of the stenographer's report.

192. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness H. R. Knollenberg to the fourteenth interrogatory propounded to him by plaintiff, as shown on page 289 of the stenographer's report.

193. The Court erred in admitting in evidence, over the objec-

tions of defendant, the deposition of the witness T. R. Hopkins, as shown on pages 290-296 of the stenographer's report.

194. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness T. R. Hopkins
630 — the fifteenth interrogatory propounded to him by plaintiff, as shown on page 294 of the stenographer's report.

195. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness T. R. Hopkins, to the sixteenth interrogatory propounded to him by plaintiff, as shown on page 294 of the stenographer's report.

196. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness T. R. Hopkins, to the seventeenth interrogatory propounded to him by plaintiff, as shown on pages 294-295 of the stenographer's report.

197. The Court erred in admitting in evidence, over the objections of defendant, the agreement attached to plaintiff's petition and marked Exhibit "C," between the Eagle Refining Company and others, and A. W. Clem and the Waters Pierce Oil Company, as shown on pages 391-395 of the stenographer's report.

198. The Court erred in admitting in evidence, over the objections of defendant, the letter introduced in evidence by plaintiff in connection with the deposition of the witness E. S. Horn, as shown on pages 450-453 of the stenographer's report.

199. The Court erred in permitting the witness, Royer Campbell, to testify, over the objections of defendant, with reference to the prices that were obtained for oil by the Waters Pierce Oil Company (the Old Company) prior to the time that he was engaged in the oil business, at San Antonio, as shown on pages 470-471 of the stenographer's report.

200. The Court erred in permitting the witness, Royer Campbell, to testify, over the objections of defendant, as to the character of warfare and competition that the Waters Pierce Oil Company (the old Company) carried on with him in San Antonio during the year 1894, as shown on pages 472-475 of the stenographer's report.

631 201. The Court erred in permitting the witness Royer Campbell, to testify, over the objections of defendant, to statements made to him by Louis Fries with reference to the Consumers Oil Company, as shown on pages 478-485 of the stenographer's report.

202. The Court erred in admitting in evidence, over the objections of defendant, the instrument styled "Synopsis of Agreement between Roy Campbell and the Texas Oil & Gasoline Company, San Antonio, Texas, and the Waters Pierce Oil Company," as shown on pages 487-490 of the stenographer's report.

203. The Court erred in admitting in evidence, over the objections of defendant, the contract between the Waters Pierce Oil Company and Royer Campbell dated October 1st, 1894, as shown on pages 487-495 of the stenographer's report.

204. The Court erred in permitting the witness, Royer Campbell, to testify, over the objections of defendant, with reference to the methods pursued by the former Waters Pierce Oil Company and the

defendant in securing information with reference to competition, as shown on pages 508-511 of the stenographer's report.

205. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness, H. C. Arnold, to the nineteenth interrogatory propounded to him by plaintiff, as shown on pages 538-540 of the stenographer's report.

206. The Court erred in permitting the witness, A. W. Clem, to testify, over the objections of defendant, with reference to the character, extent and details of his oil business during the years 1890 to 1895, and the competition that he met with, as shown on pages 542-560 of the stenographer's report.

207. The Court erred in permitting the witness, A. W. Clem, to testify, over the objection of defendant, with reference to
632 the old Waters Pierce Oil Company cutting prices at Seymour and other places in the year 1891, as shown on pages 545-547 of the stenographer's report.

208. The Court erred in permitting the witness, A. W. Clem, to testify, over the objections of defendant, that the old Waters Pierce Oil Company, in the year 1894, after it had bought out the business of the said A. W. Clem, advances its prices, as shown on pages 548-549 of the stenographer's report.

209. The Court erred in permitting the witness, A. W. Clem, to testify, over the objections of defendant, as to the prices quoted by the Security Oil Company on nap-tha during the year 1905, and as to prices quoted by said Company on lubricating oils, as shown on pages 582-583 of the stenographer's report.

210. The Court erred in admitting in evidence, over the objections of defendant, the following letters: letter dated January 10th, 1906, addressed to C. P. Ackert, General Manager, St. Louis, Mo.; letter dated January 13th, 1906, addressed to C. P. Ackert, St. Louis, Mo.; letter dated February 15th, 1906, relating to orders Nos. 294 and 304; letter of February 17th, 1906, relating to estimated output of refinery; letter dated October 30th, 1906, to C. W. Cahoon, signed A. M. Finlay, as shown on pages 625-630 of the stenographer's report.

211. The Court erred in permitting the witness, C. W. Cahoon, to testify, over the objections of defendant, that P. W. and S. W. oils were marketed by him as agent of the defendant, as Eupion oil, as shown on pages 637-638 and on pages 690-695 of the stenographer's report.

212. The Court erred in admitting in evidence, over the objections of defendant, the letter dated February 10th, 1906, addressed to C. P. Ackert, General Manager, St. Louis, Mo., relating to Walker & Smith's Grocery Company at Brownwood, as shown on pages 647-649 of the stenographer's report.

633 213. The Court erred in admitting in evidence, over the objections of defendant, the letter dated March 7th, 1906, relating — stove gasoline addressed to C. P. Ackert, General Manager, St. Louis, Mo., as shown on pages 649 of the stenographer's report.

214. The Court erred in admitting in evidence, over the objec-

tions of defendant, the letter dated March 7th, 1905, or 1906, relating to discount to Rotan Grocery Company, Waco, addressed to C. P. Ackert, General Manager, St. Louis, Mo., as shown on pages 469-650 of the stenographer's report.

215. The Court erred in admitting in evidence, over the objections of defendant, the letter dated March 23rd, 1906, relating to discount to Snider Brokerage Company, San Angelo, as shown on page 650 of the stenographer's report.

216. The Court erred in permitting the witness, C. W. Cahoon, who was shown to be one of the general agents of defendant, in Texas*m* to testify, over the objections of defendant that at some points in Texas where there was no competition defendant's prices were higher than at points where there was competition, as shown on pages 650-651 of the stenographer's report.

217. The Court erred in permitting the witness, C. W. Cahoon, to testify, over the objections of defendant, that there were some states where *be* presumed that oil of the grade of S. W. 112 could not be sold under the law, as shown on pages 692-693 of the stenographer's report.

218. The Court erred in admitting in evidence, over the objections of defendant, the copies of contracts attached to the deposition of Chas. S. Keith as exhibits, as shown on pages 722-748 of the stenographer's report.

219. The Court erred in admitting in evidence, over the objections of defendant, the letter dated September 1st, 1904,
634 from R. H. McNall to A. M. Finlay, St. Louis, Mo., as shown on pages 804-815 of the stenographer's report.

220. The Court erred in admitting in evidence over the objections of defendant, the letter signed R. H. McNall, dated December 18th, 1902, addressed to J. P. Gruet, Secretary, St. Louis, Mo., as shown on pages 804-815 of the stenographer's report.

221. The Court erred in admitting in evidence, over the objections of defendant, the various letters shown to have been admitted in evidence on pages 817-821 of the stenographer's report.

222. The Court erred in permitting the witness, C. P. Ackert, to testify, over the objections of defendant, with reference to the operations of the International Oil Company and the International Oil Works, as shown on pages 822-823 of the stenographer's report.

223. The Court erred in refusing to permit the defendant to prove that the annual franchise taxes of the Waters Pierce Oil Company had been paid by said Company to the State of Texas for the year 1900 and each succeeding year up to the date of the trial, as shown on pages 958 of the stenographer's report.

224. The Court erred in that part of its charge to the jury wherein it instructed the jury as follows: "The state alleges that on or about January 1, 1870, John D. Rockefeller, John D. Archbold, H. H. Rogers, Henry M. Flagler and a number of other persons conceived a scheme of monopolizing and controlling the business of refining, transporting and selling petroleum and the products thereof throughout the United States, including the State of Texas, and that said persons to that end and for that purpose entered into a con-

spiracy among themselves and with other individual corporations, including the defendant corporation, which conspiracy, the
637 State alleges, continued in force and effect from the date of its formation until the date of the filing of the State's second amended petition in this case, and the state further alleges that in pursuance of said alleged conspiracy the defendant has done various acts and entered into various agreements which constitute violations of the anti-trust laws of Texas."

225. The Court erred in that part of its charge to the jury wherein it instructed the jury as follows: "The State further alleges that the defendant's predecessor, the Waters Pierce Oil Company, incorporated in 1878, on or about the fifth day of October, 1894, entered into a contract with the Eagle Refining Company, A. W. Clem and certain individuals named in its petition, by the terms of which defendant acquired the property of said Eagle Refining Company situated in the City of Dallas, Texas, and the right to operate its business under the name of the said Eagle Refining Company. It further alleges that the defendant did subsequent to May 31, 1900, operate said Eagle Refining Company and maintain the plant thereof at Dallas, as an apparently competing concern for various purposes prohibited by the anti-trust law."

226. The Court erred in that part of its charge to the jury wherein it instructed the jury as follows: "The State further alleges that in the year 1896 the defendant's said predecessor bought out the business of the Texas Oil and Gasoline Company and of one Roy Campbell, who were at that time doing business in the City of San Antonio and elsewhere, and entered into contracts and agreements with said Texas Oil and Gasoline Company and Roy Campbell whereby said Texas Oil and Gasoline Company was thereafter to be operated under said name by defendant as an apparently competing concern with defendant at San Antonio in the sale of the products of
638 petroleum. It further alleges that said Texas Oil and Gasoline Company was operated by defendant as a concern apparently competing with it at San Antonio subsequent to May 31, 1900, for various purposes in violation of the anti-trust laws of the State. For full particulars of the State's allegations you are referred to its second amended petition."

227. The Court erred in the second division of that portion of its charge, stating the law of the case, wherein it instructed the jury as follows: "The statute known as the anti-trust law of 1899 was in force on May 31, 1900, and thereafter remained continuously in force until March 31, 1903."

228. The Court erred in that portion of the second division of its charge, stating the law of the case, wherein it instructed the jury as follows: "For the purposes of this charge you are instructed that this act made it unlawful for any corporation transacting or conducting any kind of business in this state to enter into or become a party to any agreement or understanding with any other corporation or individual to fix or regulate the price in Texas of any article of manufacture or merchandise or to control or limit in Texas the trade in any article of manufacture or merchandise.

229. The Court erred in that portion of the third division of its charge, stating the law of the case, wherein it instructed the jury as follows: "But neither oil purchased by the defendant from the Corsicana Refinery or elsewhere in Texas, nor other merchandise purchased by the defendant at points in Texas, nor such oil or other merchandise purchased by defendant at points outside the state and transported into the state and removed from the original packages or vessels in which it was brought into the state and mingled with other property of similar character in the states is the subject of interstate commerce, but on the contrary is the subject of local commerce, and any agreement or pool or arrangement entered
637 into by defendant with reference to such property or the sale thereof, if any such there were, would be unlawful if in violation of the anti-trust laws of this State."

230. The Court erred in that portion of the fifth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "Much evidence has been introduced before you relating to the doings and agreements of the agents of corporations other than defendant, and to the doings and agreements of defendant's predecessor agents prior to June 1, 1900, and both outside and within the State of Texas. None of this evidence is competent or can be considered by you against the defendant except within the limitations and for the purposes hereinafter stated, viz: 'If you find from a preponderance of other evidence in the case independent of all declarations or statements made by any person or persons except their evidence given while testifying by deposition or personally as witnesses on the trial of this case, that on June 1, 1900, there was formed or existed an agreement between the governing officers of defendant and the governing officers of any of the other corporations alleged in the state's petition to be co-conspirators with defendant relating to the management of defendant's business, or between the governing officers of defendant and any of the individuals alleged in the state's petition to be co-conspirators with defendant relating to the management of defendant's business, then you may consider for what, if anything, you think it is worth, such acts or declarations of their authorized agents, if any, as were done or made, as the case may be, durng the existence of said agreement, if any, and in furtherance of its execution, for the purpose of determining the character of said agreement, and whether or not it contemplated a violation by defendant, of the anti-trust laws of Texas.' You may further consider for what, if anythng, you think it worth as tending to show or explain the course of de-
638 fendant's dealing in Texas, said evidence, if any, of what it did through its duly appointed and authorized agents, if any, outside of the state both prior and subsequent to said date. None of said evidence can be considered by you against the defendant for any other purpose whatsoever, and none of it can be so considered by you against the defendant for said purposes, except such of it, if any, as you think proper to be considered when tested by the rules above stated relating to its competency."

231. The Court erred in that portion of the sixth division of its

charge, stating the law of the case, wherein it instructed the jury as follows: "No agreement made by the defendant outside the State of Texas to violate the anti-trust laws of Texas, if any such there were, can be *amde* the basis for forfeiting its permit to do business in Texas or for imposing penalties upon it, unless such agreement was executed or attempted to be executed in Texas by the duly authorized agents of the defendant; but, in as much, as the undisputed evidence in the case shows that the defendant has continuously maintained its agents in this state and prosecuted its business herein since May 31, 1900, you will be authorized to convict it of violation the anti-trust laws of Texas, if you find from a preponderance of the evidence in favor of the state on the issues submitted for your consideration in paragraphs 7, 8, 9, 10, or 11 of this charge."

232. The Court erred in that portion of the seventh division of its charge, stating the law of the case, wherein it instructed the jury as follows: "If you find from a preponderance of the evidence that defendant company, acting through its duly appointed and authorized agents, entered into or became a party to an agreement or understanding with the Standard Oil Company of New Jer-
639 sey on June 1, 1900, to fix or regulate the price in Texas of oil refined from petroleum, and if you further find from a preponderance of the evidence that the defendant company, remained or continued to be party to said agreement or understanding, if any, and persisted in carrying same out in Texas, if any, through its duly authorized agents on June 1, 1900, or on any other date or dates subsequent to June 1, 1900, and prior to March 31, 1903, and, if you further find from a preponderance of the evidence that the oil with reference to which said agreement or understanding, if any, was so made and carried out, was the subject of local as distinguished from interstate commerce, you will return a verdict for the State and say by your verdict, We, the jury, find for the state on the issues submitted for our consideration in paragraph seven of the Court's charge. You are instructed in this connection that if you find in favor of the state on the issues above submitted for your consideration in this paragraph of the charge, each day embraced between May 31, 1900, and March 31, 1903, during which the defendant remained a party to the agreement or understanding herein mentioned, if there were any such agreements or understandings, and if it remained a party to same on any of said days, would constitute a separate and distinct violation of the anti-trust laws of Texas."

233. The Court erred in that portion of the eighth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "If you find from a preponderance of the evidence that on June 1, 1900, or on any date subsequent thereto and prior to March 31, 1903, the defendant acting through its duly appointed and authorized agents had brought about or permitted any combination or a union of its capital with the capital of the Standard Oil Company of New Jersey whereby the price in Texas of oil
640 refined from petroleum, other than oil which was subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or whereby the price in Texas of such oil

would be reasonably calculated to be fixed or regulated, or whereby the trade in such oil in Texas was sought to be controlled or limited, you will return a verdict for the state and say by your verdict, "We, the jury, find for the state on the issues submitted for our consideration in paragraph 8 of the Court's charge." In this connection you are instructed that if the defendant became a party to a pool of the character mentioned in this paragraph of the charge, each day between May 31, 1900, and March 31, 1903, that it remained a party to such pool, if there were any such days, would constitute a separate violation of the anti-trust laws of Texas."

234. The Court erred in that porton of the ninth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "If you find from a preponderance of the evidence that the defendant acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit in this state of the business of selling oil refined from petroleum, other than oil which was the subject of insterstate as distinguished from local commerce, or to fix, maintain or increase the price of such oil in Texas, or to prevent or lessen competition in Texas in the sale of such oil, and that the defendant remained or was a party to and acted under such combination, if such there were, on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, you will return a verdict for the state, and say by your verdict, 'We, the jury, find for the state on the issues submitted for our consideration in paragraph 9 of the Court's charge.

In this connection you are instructed that if the defendant
641 became a party to a trust of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29, 1907, that it remained a party to and acted under such trust, if there were such days, would constitute a separate violation of the anti-trust laws of Texas."

235. The Court erred in that portion of the tenth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "If you find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, and that they were placed under such common management or control, if any, by their respectively authorized officers, under such circumstances, that such common management or control, if such there were, created or tended to create or carry out restrictions in the sale in Texas of oil of the kind and character mentioned in the last preceding paragraph of this charge, or to fix maintain, or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil, you will return a verdict for the state and say by your verdict, We the jury, find for the state on the issues submitted for our consideration in paragraph 10 of the Court's charge. In this connection you are instructed that if the defendant entered into

a monopoly of the character mentioned in this paragraph of the charge, each day between March 31, 1903, and April 29, 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas."

236. The Court erred in that portion of the eleventh division of its charge, stating the law of the case, wherein it instructed
642 the jury as follows: "If you find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation and thereby effected a combination of said two corporations, and if you further find from a preponderance of the evidence that said stock was acquired and combination effected, if any, with the purpose and intention on—part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of the character and kind of oil above mentioned or that the effect of said combination, if such there were, tended to effect or lessen the competition in the sale in Texas of said oil, you will return a verdict for the state and say by your verdict, "We, the jury, find in favor of the state on the issues submitted for our consideration in paragraph 11 of the court's charge." In this connection you are instructed that if the defendant entered into a monopoly of the character mentioned in this papragraph of the charge, each day between March 31, 1903, and April 29, 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas."

237. The Court erred in the twelfth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "The evidence introduced before you does not show with sufficient definiteness that the defendant has since May 31, 1900, acted under or persisted in the performance of either the contract with Clem and the Eagle Refining Company and others, or the contract with Roy Campbell and the Texas Oil and Gasoline Company, in such a manner as to violate the anti-trust laws of 1899 or 1903. You are therefore instructed to find in defendant's favor on the issues pleaded by the State with reference to said contracts."

643 238. The Court erred in the thirteenth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "Evidence has been introduced before you tending to show that the defendant has given rebates and discounts in the course of its dealings; evidence has also been introduced before you tending to show that defendant has made contracts and entered into understandings other than those which have been submitted for your consideration in paragraphs seven to eleven, inclusive, of this charge. Evidence has also been introduced before you tending to show the general course of dealings of defendant in Texas and elsewhere, including some of its business methods in meeting competition. You are instructed that none of this evidence shows or tends to show any violation of the anti-trust laws of Texas, unless it tends in some degree to establish some one or more of the issues submitted for your

consideration in the last above mentioned paragraphs of this charge; you are therefore instructed to acquit the defendant and return a general verdict for it, notwithstanding any and all of said evidence, unless you find in favor of the State on the issues submitted for your consideration in some one or more of said paragraphs of the charge."

239. The Court erred in that portion of the fourteenth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "If you convict the defendant under the foregoing instructions of any violation or violations of the anti-trust law of 1899, you will specify in your verdict the date or days for which it is convicted of having violated said law, and will further specify in your verdict that for said violation or violations, if any, you find that its permit to do business in Texas shall be forfeited, and the amount of money which shall be adjudged against it as penalties for said violations, if any. In fixing the penalties, if any, which
644 you assess against the defendant for any violation of which you may convict it, of the anti-trust law of 1899, you will fix the same at not less than $200 nor more than $5000 per day for each day that you find it has violated the law.

240. The Court erred in that portion of the fourteenth division of its charge, stating the law of the case wherein it instructed the jury as follows: "If you convict the defendant of any violations of the anti-trust law of 1903, you will specify in your verdict the date or days for which it is so convicted and further specify therein that as a result of said conviction its permit to do business in Texas shall be forfeited, and the sum of money that shall be adjudged against it as a penalty for such violations, fixing said sum at $50 per day for each and every day that you convict it of having violated said law."

241. The Court erred in that portion of the fifteenth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "If you find in favor of the State on all the issues submitted to you and for the entire time for which penalties are claimed by the state against the defendant in its petition, you will say: "We the jury, find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for the penalties at —— Dollars; and we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being 1488 days, and fix the penalties at $74,400. We further find that the permit of the defendant to do business in the State of Texas should be cancelled. We find for defendant upon all issues made by the pleadings and not submitted in the charge of the Court."

242. The Court erred in that portion of the fifteenth division of its charge, stating the law of the case, wherein it instructed
645 the jury as follows: "If you find in favor of the State on some of the issues submitted for your consideration relating to the alleged violations of the anti-trust law of 1899, and in favor of the State with reference to some of the alleged violations of the anti-trust law of 1903, you may use the following form of verdict:

"We the jury, find in favor of the State on issues submitted for our consideration in the following papragraphs of the Court's charge: ——.

We further find that the defendant violated the anti-trust laws of Texas on the following days embraced between May 31, 1900, and March 31, 1903: ——. We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited and that penalties should be imposed upon it in the amount of —— dollars. We further find that the defendant violated the anti-trust laws of 1903, on the following days embraced between the 30th day of March, 1903, and the 29th day of April, 1907: ——. We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited and that penalties should be imposed upon it in the amount of —— Dollars. On all other issues raised by the pleadings, we find in favor of the defendant."

243. The Court erred in that portion of the fifteenth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "If you find in favor of the State with reference to some or all of the alleged violations of the anti-trust law of 1899, submitted for your consideration, and if you find in favor of the defendant on other of said alleged violations, and if you find in favor of the defendant on the issue of all of the alleged violations of the anti-trust law of 1903, you may use the following form of verdict: "We, the jury, find in favor of the state on the issues
646 submitted for our consideration in the following paragraphs of the court's charge: ——. We further find that the defendant has violated the anti-trust laws of Texas on each of the following days embraced between May 31, 1900, and March 31, 1903: ——. We further find that because of said violations the permit of the defendant to do business in Texas should be forfeited, and penalties should be imposed upon it in the amount of —— Dollars. We further find in defendant's favor on all alleged violations of the anti-trust laws of 1903, and on all other issues made by the pleadings."

244. The Court erred in that portion of the fifteenth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "If you find in the defendant's favor on all issues submitted for your consideration relating to its alleged violation of the anti-trust laws of 1899, but find in favor of the state on all or some of the issues relating to defendant's alleged violations of the anti-trust law of 1903, you may use the following form of verdict: "We, the jury, find in defendant's favor on all issues submitted for our consideration relating to its alleged violation of the anti-trust laws of 1899, but find in favor of the state under the following paragraphs of the Court's charge: —— for alleged violations of the anti-trust laws of 1903. We further find that the defendant has violated said anti-trust laws on each of the following days embraced between March 30, 1903, and April 29, 1907. ——. We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the sum of —— Dollars."

245. The Court erred in refusing Special Charge No. 1 requested by the defendant.

647 246. The Court erred in refusing Special Charge No. 2 requested by the defendant.

247. The Court erred in refusing Special Charge No. 3 requested by the defendant.

248. The Court erred in refusing Special Charge No. 4 requested by the defendant.

249. The Court erred in refusing Special Charge No. 5 requested by the defendant.

250. The Court erred in refusing Special Charge No. 6 requested by the defendant.

251. The Court erred in refusing Special Charge No. 7 requested by the defendant.

252. The Court erred in refusing Special Charge No. 8 requested by the defendant.

253. The Court erred in refusing Special Charge No. 9 requested by the defendant.

254. The Court erred in refusing Special Charge No. 10 requested by the defendant.

255. The Court erred in refusing Special Charge No. 11 requested by the defendant.

256. The Court erred in refusing Special Charge No. 12 requested by the defendant.

257. The Court erred in refusing Special Charge No. 13 requested by the defendant.

258. The Court erred in refusing Special Charge No. 14 requested by the defendant.

259. The Court erred in refusing Special Charge No. 15 requested by the defendant.

260. The Court erred in refusing Special Charge No. 16 requested by the defendant.

261. The Court erred in refusing Special Charge No. 17 requested by the defendant.

648 262. The Court erred in refusing Special Charge No. 18 requested by the defendant.

263. The Court erred in refusing Special Charge No. 19 requested by the defendant.

264. The Court erred in refusing Special Charge No. 20 requested by the defendant.

265. The Court erred in refusing Special Charge No. 21 requested by the defendant.

266. The Court erred in refusing Special Charge No. 22 requested by the defendant.

267. The Court erred in refusing Special Charge No. 23 requested by the defendant.

268. The Court erred in refusing Special Charge No. 24 requested by the defendant.

269. The Court erred in refusing Special Charge No. 25 requested by the defendant.

270. The Court erred in refusing to grant the defendant a new

trial under the first ground of its motion for a new trial, because, as set forth in said first ground of said motion for a new trial the verdict of the jury is not supported by the evidence in that the evidence wholly failed to show that the defendant at any time since June 1st, 1900, committed any act or did anything within the State of Texas or elsewhere which was in violation of the anti-trust laws of the State of Texas.

271. The Court erred in refusing to grant the defendant a new trial under the second ground of its motion for a new trial, because, as set forth in said second ground of said motion for a new trial the verdict of the jury is without evidence to support it in that all of the evidence introduced before the jury showed that whatever agreements, acts and transactions may have occurred between the Standard Oil Company of New Jersey and the defendant company did not
649 involve commerce in the State of Texas, but were with respect to and related to interstate commerce exclusively, and therefore they were not in violation of the anti-trust laws of the State of Texas.

272. The Court erred in refusing to grant the defendant a new trial under the third ground of its motion for a new trial, because, as set forth in said third ground of said motion for a trial the verdict of the jury is without evidence to support it in that the only evidence before the jury showing any agreement act or transaction between the defendant company and the Standard Oil Company of New Jersey was limited and confined to the fact of ownership by the said Standard Oil Company of stock in defendant company, and there was no evidence to show that through such ownership, or otherwise, said Standard Oil Company at any time did, in any way undertake or did in fact interfere with or control or attempt to control the business of the defendant company with reference to the matter of fixing, regulating or maintaining of prices, or in limiting or controlling the quantity of oil or other products of petroleum in the State of Texas in violation of the laws of said State.

273. The Court erred in refusing to grant the defendant a new trial under the fourth ground of its motion for a new trial, because, as set forth in said fourth ground of said motion for a new trial, the verdict of the jury is unsupported by the evidence and contrary to the charge of the court as contained in the 7th paragraph thereof, in that there was no evidence showing that the defendant company, acting through its duly appointed and authorized agents, entered into or became a party to an agreement or understanding with the Standard Oil Company of New Jersey on June 1, 1900, to fix or regulate the price in Texas of oil refined from petroleum, or that the defendant company remained or continued to be a party to said agreement or understanding, if any, and persisted in carry-
650 ing out the same in Texas through its duly authorized agent on June 1, 1900, or on any other day or days subsequent to June 1, 1900, and prior to March 31, 1903, nor was there any evidence that the oil, with reference to which said agreement or understanding, if any, was so made and carried out, was the subject of local as distinguished from interstate commerce.

274. The Court erred in refusing to grant the defendant a new trial under the fifth ground of its motion for a new trial, because as set forth in said fifth ground of said motion for a new trial, the verdict of the jury is unsupported by the evidence and contrary to the charge of the Court as contained in the 8th paragraph thereof, in that there was no evidence showing that on June 1, 1900, or on any day subsequent thereto and prior to March 31, 1903, the defendant, acting through its duly appointed and authorized agents, had brought about or prompted any combination or union of its capital with the capital of the Standard Oil Company of New Jersey whereby the price in Texas of oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or whereby the price in Texas of such soil would be reasonably calculated to be fixed or regulated, or whereby the trade in such oil in Texas was sought to be controlled or limited.

275. The Court erred in refusing to grant the defendant a new trial under the sixth ground of its motion for a new trial, because, as set forth in said sixth ground of said motion for a new trial, the verdict of the jury is unsupported by the evidence and contrary to the charge of the Court as contained in the 9th paragraph thereof, in that there was no evidence showing that the defendant, acting through its duly appointed and authorized agents, entered
651 into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit in this State of the business of selling oil refined from petroleum other than oil which was the subject of interstate as distinguished from local commerce, or to fix, maintain or increase the price of such oil in Texas, or to prevent or lessen competition in Texas in the sale of such oil in Texas, and that the defendant remained or was a party to and acted under such combination, if any, on March 31, 1903, or on any day subsequent thereto and prior to April 29th, 1907.

276. The Court erred in refusing to grant the defendant a new trial under the seventh ground of its motion for a new trial, because, as set forth in said seventh ground of said motion for a new trial, the verdict of the jury is unsupported by the evidence and contrary to the charge of the court as contained in the 10th paragraph thereof, in that there was no evidence showing that the direction of the affairs of the defendant and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on any day subsequent thereto and prior to April 29, 1907, and that they were placed under such management and control, if any, by their respectively authorized officers under such circumstances that such common management or control, if such there was, created or tended to create or carry out restrictions in the sale in Texas of oil of the kind and character mentioned in the 9th paragraph of the charge, or to fix, maintain, or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil.

652 277. The Court erred in refusing to grant the defendant a new trial under the eighth ground of its motion for a new trial, because, as set forth in said eighth ground of said motion for a new trial, the verdict of the jury is unsupported by the evidence and contrary to the charge of the Court as contained in the 11th paragraph thereof, in that there was no evidence showing that the Standard Oil Company of New Jersey had on March 31, 1903, or any day subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation and thereby effected a combination of said two corporations, nor was there any evidence showing that said stock was acquired and combination effected, if any, with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of the kind and character of oil mentioned, or that the effect of such combination if any, tended to effect or lessen the competition in the sale in Texas of said oil.

278. The Court erred in refusing to grant the defendant a new trial under the ninth ground of its motion for a new trial, because, as set forth in said ninth ground of said motion for a new trial, the verdict of the jury, in so far as it assesses penalties against the defendant on each of the issues submitted to the jury for each of the days between May 31, 1900, and March 31, 1903, being as found by the jury, 1033 days, is unsupported by the evidence, in that there was no evidence showing that the defendant, if it
653 violated the law in any of the respects complained of between May 31, 1900, and March 31, 1903, committed such violation on any particular day, nor was there any evidence showing that the defendant, if it violated the law in any of the respects complained of between May 31, 1900, and March 31, 1903, committed such violation for either 1033 days or any other definite number of days.

279. The Court erred in refusing to grant the defendant a new trial under the tenth ground of its motion for a new trial, because, as set forth in said tenth ground of said motion for a new trial, the verdict of the jury, in so far as it finds for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being 1488 days, as found by the jury, is unsupported by the evidence, in that there was no evidence showing that the defendant, if it violated the law in any of the respects complained of between April 1, 1903, and April 29, 1907, committed such violations on any particular day, nor was there any evidence showing that the defendant violated, if it violated the law in any of the respects complained of between April 1, 1903, and April 29, 1907, committed such violation for 1488 days or any other definite number of days.

280. The Court erred in refusing to grant the defendant a new trial under the eleventh ground of its motion for a new trial, because, as set forth in said eleventh ground of said motion for a new trial, the verdict of the jury in assessing penalties against the defendant at the sum of $1,549,500.00 for alleged violations of the
654 law for each of the days between May 31, 1900, and March 31, 1903, was so grossly and shockingly excessive as to show

passion and prejudice upon the part of the jury against the defendant.

281. The Court erred in refusing to grant the defendant a new trial under the twelfth ground of its motion for a new trial, because, as set forth in said twelfth ground of said motion for a new trial, the verdict of the jury in assessing penalties against the defendant for alleged violation of the law for each of the days between May 31, 1900, and March 31, 1903, at the sum of $1,549,500.00 was so manifestly excessive as to amount to the deprivation of the property of the defendant without due process of law in contravention of Section 1 of the 14th Amendment to the constitution of the United States.

282. The Court erred in refusing to grant the defendant a new trial under the thirteenth ground of its motion for a new trial, because, as set forth in said thirteenth ground of said motion for a new trial, the verdict of the jury in assessing penalties against the defendant for alleged violations of the law for each of the days between May 31, 1900, and March 31, 1903, at the sum of $1,549,500.00 was so manifestly excessive as to amount to the imposition of excessive fines in violation of Section 13 of Article 1 of the Constitution of the State of Texas.

283. The Court erred in refusing to grant the defendant a new trial under the fourteenth ground of its motion for a new trial, because, as set forth in said fourteenth ground of said motion for a new trial, the verdict of the jury in assessing penalties against the defendant for alleged violations of the law for each of the days between May 31, 1900, and March 31, 1903, at the sum of $1,549,500.00 and in assessing penalties against the defendant for alleged violations of law for each of the days between April 1, 1903,
655 and April 29, 1907, at the sum of $74,400.00, is so manifestly excessive as to amount to the deprivation of the property of the defendant without due process of law in contravention of Section 1 of the 14th Amendment to the Constitution of the United States.

284. The Court erred in refusing to grant the defendant a new trial under the fifteenth ground of its motion for a new trial, because, as set forth in said fifteenth ground of said motion for a new trial, the verdict of the jury in assessing penalties, against the defendant for alleged violations of the law for each of the days between May 31, 1900, and March 31, 1903, at the sum of $1,549,500.00, and in assessing penalties against the defendant for alleged violations of the law for each of the days between April 1, 1903, and April 29, 1907, at the sum of $74,400.00, is so manifestly excessive as to amount to the imposition upon the defendant of excessive fines in violation of Section 13 of Article 1 of the Constitution of the State of Texas.

285. The Court erred in overruling defendant's general exception to the motion or application of the State for the appointment of a receiver.

286. As the judgment recovered by the State of Texas against defendant on June 1st, 1897, was a personal judgment and did not attempt to foreclose the lien claimed upon defendant's property in

the State, the Court was without jurisdiction by motion filed in the same cause to appoint a receiver, and erred in considering the same and in appointing the said Eckhardt receiver upon said motion.

287. The Court erred in overruling defendant's request for a postponement of action upon the said application until defendant should have a reasonable time to file a supersedeas bond in connection with its appeal from the main judgment rendered against it on June 1st, 1907.

656 288. The Court erred in making its order granting the application of the State of Texas for the appointment of a receiver of defendant's property by its order entered on June 10th, 1907.

289. The Court erred in naming and appointing Robert J. Eckhardt to be the receiver of defendant's property by its order entered on June 13th, 1907.

290. The Court erred in refusing to consider and approve defendant's supersedeas bond in the sum of One Hundred Thousand Dollars ($100,000.00) tendered on June 15th, 1907, and in withholding its approval thereof until after the bond of the said Robert J. Eckhardt as receiver was tendered and approved on June 19th, 1907.

291. When defendant's appeal bond was approved and filed on June 15th, 1907, superseding the judgment recovered against it by the State of Texas on June 1st, 1907, in the main case, the appointment of said Robert J. Eckhardt as receiver, and all orders and proceedings theretofore had in connection with such appointment, were thereby vacated and became null and void, and the said Court erred in not entering a formal order recognizing the legal effect of the said supersedeas bond and vacating said appointment and setting aside all of its said orders, and in further considering said appointment as in force for any purpose.

292. The Act of the Legislature of the State of Texas approved April 11th, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void in so far as it attempts to create a lien upon this defendant's property for acts committed before the said Act took effect, in violation of Sec. 16, Art. 1, of the Constitution of the State of Texas.

657 293. The Act of the Legislature of the State of Texas approved April 11th, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void in that it attempts to create a lien upon this defendant's property for acts committed before said Act took effect, in violation of Section Ten of Article Two of the Constitution of the United States, which denies to any state the right to pass an *ex post facto* law, and the Court erred in considering said act as the basis of its orders appointing the said receiver.

294. The said Act of the Legislature of the State of Texas, approved April 11th, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void in so far as it authorizes the appointment of a receiver in a suit brought to recover a personal judgment in which no lien upon defendant's property

was set up and adjudicated, and the action of the Court in appointing the said receiver in this cause was in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, in that it results in depriving defendant of its property without due process of law and in denying to defendant the equal protection of the law.

295. The said Act of the Legislature of the State of Texas, approved April 11th, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void, in so far as it authorizes the appointment of a receiver, in a suit brought against a defendant to recover fines and penalties for offenses committed in violation of the anti-trust laws of the State, as a means of preventing the defendant from the further or continued violation of such laws, and the action of the Court in appointing a receiver for defendant's property on that ground and for that purpose, as indicated in the opinion of the Court at the time said ap-
658 pointment was made, was unauthorized in law, and in violation of Section 17 of Article One, of the Constitution of the State of Texas.

296. The said Act of the Legislature, of the State of Texas, approved April 11th, 1907, under which the Court acted in appointing said receiver, is unconstitutional, null and void, in so far as it authorizes the appointment of a receiver in a suit brought against a defendant to recover fines and penalties for offenses committed in violation of the anti-trust laws of the State, as a means of preventing the defendant from the further or continued violation of such laws, and the action of the Court in appointing a receiver for defendant's property on that ground and for that purpose, as indicated in the opinion of the Court at the time said appointment was made, was unauthorized in law, and in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, in that the result of said action was and is to deprive the defendant of its property without due process of law and to deny to defendant the equal protection of the laws.

297. The Court erred in appointing the said receiver without any evidence being introduced before it at the time said appointment was made, to show that defendant did not intend to change its status and methods of doing business so as to conform to the laws of the State of Texas, and without evidence affirmatively showing that defendant could not make use of its property and carry on its business in accordance with law, and in holding that the Court was authorized to so appoint a receiver for defendant's property in the State of Texas and deprive defendant of the instrumentalities by which it had been convicted of violating the laws of said state, based upon its past conduct and the said judgment of conviction rendered against it on June 1st, 1907.

659 Wherefore, defendant says that the said action of the Court was unauthorized and in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, and has the effect of depriving defendant of its property without

due process of law, and in denying to it the equal protection of the laws.

298. The Court erred in disregarding the supersedeas bond filed by defendant in connection with its appeal from the main judgment recovered against it on June 1st, 1907, and in requiring defendant to file the additional bond in the sum of One Hundred Thousand Dollars to supersede the orders appointing the said receiver and to avoid having to surrender its property to said receiver by reason of said appointment; and this action on the part of the Court was without lawful warrant and in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, in that the effect of such action by the Court was to deprive the defendant of its property without due process of law and to deny to it the equal protection of the law.

Wherefore, defendant prays that the judgment rendered against it and the said orders appointing a receiver, be reversed and set aside, and it will ever pray, &c.

CLARK & BOLINGER,
COCHRAN & PENN,
N. A. STEDMAN,
D. W. ODELL,
Attorneys for Defendant.

JNO. D. JOHNSON,
H. S. PRIEST,
Of Counsel.

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Assignment of Errors in Main case. Filed July 20, 1907, D. J. Pickle, Clerk, By J. A. Belger, Deputy.

660 *Additional Assignments of Error in Main Case.*

Filed August 7th, 1907.

In the District Court of Travis County, State of Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS-PIERCE OIL COMPANY.

In the above entitled and numbered cause, now comes the defendant and files the following additional assignments of error to the action of the Court in appointing Robert J. Eckhardt receiver of the property of defendant, to-wit:

No. 299. The Act of the Legislature of the State of Texas, approved April 11th, 1907, being Chapter 87 of the General Laws of the State of Texas, passed by the Thirtieth Legislature at its Regular Session, in so far as it authorizes the appointment of a receiver

of appellant's property in this suit or prosecution instituted against appellant prior to the passage of said Act and for offenses alleged to have been committed prior to its passage, is unconstitutional, null and void, in that it violates the Tenth Section of Article One of the Constitution of the United States, which provides that no State shall pass a bill of attainder or an *ex post facto* law.

No. 300. The said Act of the Legislature of the State of Texas, approved April 11th, 1907, is unconstitutional, null and void, in so far as it attempts to create a lien upon appellant's property for the alleged violation of the anti-trust laws of said State, in that the lien is not created by the terms of the Act, based alone
661 upon the commission of the offense, but is left to be created by the action of the prosecuting officer in filing suit to recover the prescribed penalties. The statute therefore does not prescribe a fixed and uniform rule of law, applicable to all persons alike, but is a delegation of the legislative power to officers of the executive department to create a lien, or not create it, and to arbitrarily discriminate between persons at will, and the appointment of the receiver to take charge of appellant's property under this statute, results in depriving appellant of its property without due process of law, and in denying to it the equal protection of the law, in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, which provisions of the Constitution of the United States are here urged and relied upon by appellant as against the validity and application of said Act of the Legislature of the State of Texas to the matters involved in this case, and to the act of the Court in appointing the said receiver thereunder.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Defendant.

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Additional Assignments Nos. 299 & 300 in Main Case. Filed Aug. 7th, 1907. D. J. Pickle, Clerk.

662 *Additional Assignments of Error in Main Case.*

Filed August 13th, 1907.

In District Court, Travis County, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

Now comes the defendant in the above entitled and numbered cause and files the following assignments of error committed by

the court on the trial of this cause, additional to the assignments hereinbefore filed.

301.

The court erred in that portion of the eighth paragraph of its charge, relating to the act of May 25, 1899, wherein it instructed the jury to find for the plaintiff if they should find from a preponderance of the evidence that on June 1, 1900, or on any date subsequent thereto, and prior to March 31, 1903, the defendant, acting through its duly appointed and authorized agents, *had brought about or permitted any combination or union of its capital with the capital of the Standard Oil Company of New Jersey, whereby the price in Texas of oil refined from petroleum*, other than oil which was subject of interstate as distinguished from local commerce, *was sought to be fixed or regulated.*

663

302.

The court erred in that portion of the eighth paragraph of its charge, relating to the Act May 25, 1899, wherein it instructed the jury to find for the plaintiff if they should find from a preponderance of the evidence that on June 1, 1900, or on any date subsequent thereto and prior to March 31, 1903, the defendant, acting through its duly appointed and authorized agents, *had brought about or permitted any combination or union of its capital with the capital of the Standard Oil Company of New Jersey, whereby the price in Texas of oil refined from petroleum*, other than oil which was the subject of interstate as distinguished from local commerce, *would be reasonably calculated to be fixed or regulated.*

303.

The court erred in that portion of the eighth paragraph of its charge, in regard to the act of May 25, 1899, wherein it instructed the jury to find for the plaintiff if they should find from a preponderance of the evidence that, on June 1, 1900, or on any date subsequent thereto and prior to March 31, 1903, the defendant, acting through its duly appointed and authorized agents, had brought about or permitted any combination or a union of its capital with the capital of the Standard Oil Company of New Jersey, *whereby the trade in oil, refined from petroleum, in Texas, was sought to be controlled or limited.*

304.

The court erred in that portion of the ninth paragraph of its charge, relating to the act of March 31, 1903, wherein it instructed the jury to find for the plaintiff if they should find from a preponderance of the evidence that the defendant, acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard Oil Company
664 of New Jersey *for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit in this State of the business of selling oil refined from petroleum*, other than oil which was the subject of interstate

as distinguished from local commerce, and that the defendant remained or was a party to and acted under such combination, if such there were, on March 31, 1903, or on any other date subsequent thereto and prior to April 29, 1907.

305.

The court erred in that portion of the tenth paragraph of its charge, relating to the act of March 31, 1903, wherein it instructed the jury to find for the plaintiff if they should find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, and that they were placed under such common management or control, if any, by their respective authorized officers under such circumstances that such common management or control, if such there were, *created or tended to create or carry out restrictions in the sale in Texas of oil.*

306.

The court erred in that portion of the tenth paragraph of its charge, relating to the act of March 31, 1903, wherein it instructed the jury to find for the plaintiff if they should find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control
665 on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, and that they were placed under such common management or control, if any, by their respective authorized officers under such circumstances that such common management, or control, if such there were, *tended to fix, maintain or increas the price of oil in Texas, or to prevent or lessen competition in the sale of oil in Texas.*

307.

The court erred in instructing the jury, as it did, in the 14th paragraph of its charge, that if they convicted the defendant of any violation of the anti-trust law of 1899 they would assess penalties against defendant *at not less than $200 nor more than $5000 per day for each day that they should find defendant had violated the law.*

308.

The court erred in the fifteenth paragraph of its charge in instructing the jury that in assessing penalties against defendant they could assess penalties for 1,033 days, covering the period between May 31, 1900, and March 31, 1903, and for 1,488 days, covering the period between April 1, 1903, and April 29, 1907.

309.

The court erred in permitting the witness C. W. Cahoon, who was shown to have been one of the general agents of the defendant com-

pany in Texas, to testify, over the objections of the defendant, that the defendant had at some times in Texas marketed as eupion oil both P. W. and S. W. oil, both of which were shown to have been grades of oil inferior to the grade of oil usually sold under the name of eupion oil as shown on pages 637-639 and pages 690 and 695 of the stenographer's report.

666 310.

The court erred in admitting in evidence, over the objections of defendant, that portion of the answer of the witness, Ida M. Butts, to the seventh interrogatory propounded to her, wherein she testified that while George Rice held certificates in the Standard Oil Company a suit was brought by the Attorney General of the State of Ohio to force the Standard Oil Company out of the Standard Oil Trust, or cause it to cease doing business in the State if it remained in the trust, and that the decision of the Supreme Court of Ohio was in favor of the State as shown on pages 13-17 of the stenographer's report.

311.

The court erred in admitting in evidence, over the objections of the defendant, that portion of the answer of the witness, Ida M. Butts, to the seventh interrogatory propounded to her in which she testified that, after the decision of the Supreme Court of Ohio in the suit brought by the Attorney General of that State, the Standard Oil Trust "pretended to go out of existence, and to this effect caused an order to be issued to all certificate holders, including George Rice, to exchange their trust certificates into certificates called, assignment of legal title."

312.

The court erred in admitting in evidence, over the objections of defendant, that portion of the answer of witness, Ida M. Butts, to the seventh interrogatory propounded to her by plaintiff in which she testified that, after the decision of the suit brought by the Attorney General of Ohio, the capital stock of the Standard Oil Company of New Jersey was increased and said company made to all intents and purposes the same in effect as the Standard Oil
667 Trust and that they made it the holding company for all the companies of the Standard Oil Trust.

313.

The court erred in admitting in evidence, over the objections of defendant, that portion of the answer of the witness, Ida M. Butts, to the seventh interrogatory propounded to her by plaintiff, wherein she testified that, "the trust is not dissolved and could not be dissolved until all trust certificates were surrendered."

314.

The court erred in admitting in evidence, over the objections of defendant, that portion of the answer of the witness, Ida M. Butts, to the tenth interrogatory propounded to her, in which, after detailing the corporations and persons originally entering into the Stand-

ard Oil Trust, she testified that others were added until in the early part of the year 1906 there were twenty companies in the great grand division of the trust and naming such companies as shown on pages 18-21 of the stenographer's report.

315.

The court erred in admitting in evidence, over the objections of defendant, the third, fourth, fifth, sixth, seventh and eighth paragraphs of the agreement between plaintiff and defendant, being stipulation No. 1, as shown on pages 43-46 of the stenographer's report.

316.

The court erred in permitting the witness, Royer Campbell, to testify, over the objections of defendant, that in the year 1894 when he quit buying oil from the original Waters Pierce Oil Com-.
668 pany in San Antonio, Texas, and bought from other parties to supply his trade in San Antonio, said Waters Pierce Oil Company immediately cut the price of oil from 16¢ or 17¢ to 8¢ and 10¢ per gallon, as shown on pages 470-473 of the stenographer's report. (Tr. ——.)

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Additional Assignments of Error (Main Case). Filed Aug. 13, 1907. D. J. Pickle, Clerk.

669 *Agreement to Send up Original Documents on Appeal.*

Filed June 22nd, 1907.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

It is agreed by and between the attorneys for the plaintiff and the attorneys for the defendant in the above styled and numbered cause that the following is a list of all original documents introduced in evidence upon the trial of this case material to the issues involved in this case, except as otherwise shown in the record herein.

1. Certified copy of articles of incorporation of the Standard Oil Co.; of certificates of increase of capital stock of said company, as filed in the office of the Secretary of State of the State of Ohio, said certified copy being numbered 21 for identification.

2. Certified copies of articles of association of the Waters Pierce Oil Co., incorporated May 7th, 1878; of certificate of incorporation issued to said company; of statement increasing its capital stock to $400,000.00, of certificate showing increase of capital stock to $400,000.00, as filed in the office of the Secretary of State of the State of Missouri, said certified copy being numbered 17 for identification.

3. Certified copy of certificate of incorporation of the Standard Oil Co. of New Jersey, and of certificates of amendment of said certificate of incorporation and of endorsements thereon,
670 as filed in the office of the Secretary of State of the State of New Jersey, said certified copy being numbered 6 for identification.

4. Stipulations between the attorneys for the plaintiff and the attorneys for the defendant in this case being numbered 1, 2, 3 & 4 for identification.

5. Certified copy of articles of incorporation of the Standard Oil Co. and of amendment to the articles of incorporation of the Standard Oil Co. of Kentucky, filed in the office of the Clerk of the County Court of Jefferson County, Kentucky, said certified copy being numbered 20 for identification.

6. Certified copy of articles of incorporation and amendments thereto of the Standard Oil Co. as filed in the office of the Secretary of State of the State of Iowa, same being numbered 33 for identification.

7. Certified copy of articles of incorporation of the Standard Oil Co. of Pittsburg as filed in the office of the Secretary of State of the State of Pennsylvania, same being numbered 31 for identification.

8. Certified copy of the articles of association of the Standard Oil Co. of Indiana, and of certificate of increase of its capital stock, as filed in the office of the Secretary of State of the State of Indiana, the same being numbered 32 for identification.

9. Certified copies of original certificate of incorporation of the Standard Oil Co. of New York, and of certificates of increase of its capital stock, and of certificate of increase of the number of its directors, and certificate of reduction of number of its directors, and of certificate of extension of its corporate powers, as filed in the office of the Secretary of State of the State of New York, same being numbered 27, 28, 34, 35, 36, and 37, respectively, for identification.

10. Certified copy of letters patent issued to the Atlantic
671 Refining Co.; of amendments to its charter; of its acceptance of the Constitution of Pennsylvania adopted A. D. 1873, and also of the provisions of an Act of that State of April 29, 1874, and its supplements; of election return on increase of its capital stock, and of President's return on increase of capital stock, said certified copies being numbered 15, 16, 18, 19, 23, 26, 29, and 30, respectively, for identification.

11. Certified copy of judgment of the District Court of Travis County, Texas, in cause No. 12,589, wherein the State of Texas was plaintiff and the Waters Pierce Oil Co., *et al.*, were defendants, said judgment having been rendered on the 15th day of June, 1897, same being numbered 38 for identification.

12. Certified copy of affidavit made by Andrew M. Finlay, President of the Waters Pierce Oil Co., which was incorporated May 7, 1878, showing the dissolution of said company, same being numbered 25 for identification.

13. Certified copy of articles of incorporation of the Waters Pierce Oil Co. as filed in the office of the Secretary of State of the State of Missouri May 29, 1900, same being numbered 22 for identification.

14. Certified copy of permit issued by D. H. Hardy, Secretary of State of the State of Texas, May 31, 1900, to the Waters Pierce Oil Co., incorporated in Missouri May 29, 1900, granting it permission to do business in the State of Texas, same being numbered 24 for identification.

15. Certified copy of mandate of the Supreme Court of the United States, filed in the Court of Civil Appeals of the Third Supreme Judicial District of the State of Texas on the 25th day of April, 1900, in the case of the Waters Pierce Oil Co., appellant, *vs.* The State of Texas, appellee, No. 1974, same being numbered 7 for identification.

672 16. Letters written by R. H. McNall to various persons, in package numbered 11, for identification.

17. Letter from A. M. Finlay to H. A. Dennett numbered 36 for identification.

18. Circular letter written by H. C. Pierce, President of the Waters Pierce Oil Co., incorporated May 29, 1900, numbered 4 for identification.

19. Circular letter written May 29th, 1900, by A. M. Finlay, President of the Waters Pierce Oil Co., incorporated May 7, 1878, numbered 5 for identification.

20. Copy of the charge of the court in case No. 12589 of the State of Texas *vs.* The Waters Pierce Oil Co. and others, numbered 39 for identification.

21. Copies of letters to and from C. P. Ackert and to and from C. W. Cahoon, contained in package numbered 10 for identification.

And the attorneys for the plaintiff and the attorneys for the defendant request that the above described original documents be sent up in original form on appeal and that the Court make written direction to that effect.

R. V. DAVIDSON,
Att'y General,
J. P. LIGHTFOOT,
Ass't Att'y General,
JNO. W. BRADY,
Co. Att'y,
GREGORY & BATTS,
ALLEN & HART,
Att'ys for State of Texas.
COCHRAN & PENN,
D. W. ODELL,
CLARK & BOLINGER,
N. A. STEDMAN, &
J. D. JOHNSON,
Att'ys for Def't.

The Clerk is hereby directed to send up with the record in this cause the original documents introduced on the trial and enumerated in the foregoing agreement of the parties.

V. L. BROOKS,
Judge 26th Judicial District of Texas.

(Endorsed:) No. 24551. State of Texas *vs.* Waters-Pierce Oil Company. Agreement of Attorneys relating to sending up original documents on appeal. Filed June 22nd, 1907. D. J. Pickle, Clerk. By E. Huppertz, Deputy.

673 *Bill of Costs.*

In District Court, Travis County, Texas.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

To Officers of Court, Dr.

Clerk's Costs.

Docketing Suit	$.20
Issuing Citation and Duplicate, &c	1.75
Issuing Attachment	.75
Issuing Injunction, Duplicate, &c	1.75
Issuing Notices and Copies	5.50
Issuing Notices and Duplicates, Precepts, &c	12.00
Entering Appearances	.30
Entering Continuances	.40
Entering Motions	6.40
Entering Orders, &c.	40.00
Filing Papers	56.55
Entering Judgment	1.25
Taking Affidavits	8.00
Issuing Subpœnas	7.75
" Additional Names	16.95
Swearing Witnesses	6.70
Issuing Copies Interrogatories and Notices	130.35
" " " " Commissions	163.00
Clerk's Costs Forward	$459.60

674 Clerk's Costs (Continued).

Brought Forward	$459.60
Swearing Jury	.35
Receiving and Recording Verdict	.35
Issuing 44 Witness Certificates	22.00
Approving Bonds	4.50
Copy Order Appointing Special Commissioner	2.00
Certificate to Petition	.75

Copy Notice and Certificate	3.25
Copies Applications for Subpœnas	39.00
" " and Orders	24.00
Copy Application for Receiver	2.50
Taxing Costs	.25
Copies Orders and Motions	3.00
2 Copies Order (for Receiver)	3.00
Copies Judgment, Orders, Bonds, &c	36.00
Copy Judgment No. 12,589	1.50
Copies Letters to go with Transcript	7.50
Certificate to Original Papers	.75
Transcript (Main Case)	385.00
Certificates to Briefs	1.50
Total Clerk's Costs	$996.80

675 *Sheriff's and Miscellaneous Costs.*

Total Clerk's Costs Forward	$996.80
G. S. Matthews, Sheriff:	
Citation and Mileage	1.00
Notices, Precepts, Subpœnas, &c	141.30
Jury Fee (Paid by Defendant)	5.00
Stenographer Fee	3.00
H. P. Bickler, Stenographer	468.00
Witnesses:	
A. D. Dye	2.80
Bob Wolf	5.60
G. W. Fritts	4.64
R. C. Burleson	3.00
Charles Thiele	2.96
Nelson Houser	5.60
R. E. Lee	5.12
Jno. B. Patterson	4.88
J. L. Nichols	3.92
B. F. Cagle	1.36
T. E. Cater	10.40
Theo. C. Bohles	5.72
H. M. Metz	2.00
W. L. Dodgin	3.20
A. Fonville	5.36
Wm. Nehring	5.12
Leon Puckett	2.56
A. D. Dye	2.80
W. H. Price	2.80
E. H. Miller	5.60
F. G. Reynolds	1.36
G. Cezeaux	2.80
B. F. Cagle	1.36
J. W. Payton	1.96

T. J. Rowzee	2.20
J. A. McWilliams	2.32
W. B. Rainey	2.80
Ernst W. Pfluger	3.40
Ed. V. Taylor	2.68
D. H. Beckett	1.96
C. C. Baker	2.68
W. K. Beckett	1.60
Robt. L. Cloud	3.72
S. T. Carpenter	4.88
J. B. Manor	5.40
Jno. L. Martin	1.00
E. Seelig	2.00
J. C. Adrian	4.00
Geo. Mendell	4.00
W. D. Hornaday	5.00
J. Woods Smith	8.32
Ed. Schutze	1.00
C. L. Hughes	1.72
D. B. Matthews	1.00
Forward	$1769.70

676 Brought Forward $1769.70

Notary Fees:

D. J. Pickle	21.50
F. H. Sanborn (11 Depositions)	56.70
Wm. R. Condit	20.26
Robt. Frinkhausen (5 Depositions)	44.05
Jas. A. Newkirk	17.60
Geo. Barnett, Jr.	87.00
Jos. Spurgen (2 Depositions)	9.29
J. C. Brenan	26.50
E. L. King	8.75
W. S. Dianger	6.00
J. M. Gray	10.00
E. A. Neal (3 Depositions)	18.45
Geo. Burnett	7.00
Kirk Hawkins	5.75
Chas. Fox	25.00
Robt. Finkhouser	9.95
E. A. Neal	20.92
C. H. Read	2.50
Frederick H. Sanborn (Sp'l Com'r)	200.00
H. F. Lewis	3.50
Deposition Crosby	2.50
Deposition Younger	2.50
F. H. Sanborn (Special Commissioner) Deposition- of J. P. Gruet, *et al.*	500.00
Total	$2875.42

677 *Clerk's Certificate.*

THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court in and for said County and State, do hereby certify that the within and foregoing on 676 pages is a true and correct transcript of all proceedings had in this court in cause No. 24,551, The State of Texas *vs.* Waters Pierce Oil Company, as same appear of record and on file in this office.

Given under my hand and seal of office, at Austin, Texas, this the 13th day of August, A. D. 1907.

[SEAL.] D. J. PICKLE,
Clerk District Court, Travis County, Texas.

(Endorsed on back:) Transcript Cover. No. 4212. Assignment. Waters Pierce Oil Company Appellant *vs.* The State of Texas, Appellee. From the District Court of Travis County, for the 26th Judicial District of Texas, at Austin, Texas. Applied for by Cochran & Penn Attorney- for Appellant on the 15th day of June A. D. 1907, and delivered to the above named attorneys on the 14th day of August 1907. D. J. Pickle, Clerk of the District Court of Travis County. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Sep. 10 1907. R. H. Connerly, Clerk.

678 to 681 THE STATE OF TEXAS
vs.
WATERS-PIERCE OIL COMPANY.

Stenographer's Report.

682 In the District Court of Travis County, 26th Judicial District, May Term, A. D. 1907.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS-PIERCE OIL COMPANY.

Before Hon. V. L. Brooks, Judge of Said Court.

Hon. R. V. Davidson, Attorney General; Hon. Jewel P. Lightfoot, Assistant Attorney General; Hon. J. W. Brady, County Attorney Travis County; Messrs. Gregory & Batts, and Messrs. Allen & Hart, for the Plaintiff.

Messrs. Clark & Bolinger, Messrs. Cochran & Penn, Hon. N. A. Stedman, Hon. O. W. Odell, for the Defendant.

Hon. John D. Johnson, Hon. H. S. Priest, of Counsel.

TUESDAY, *May* 21, 1907.

The jury having been selected and sworn, the pleadings were read, and the taking of testimony commenced at 2.30 P. M.

683 Mr. ALLEN: The plaintiff offers in evidence certified copy of the articles of incorporation of the Standard Oil Company, incorporated under the laws of the State of Ohio, on January 10, 1870, and the various amendments to it, as they appear.

Judge PENN: If the Court please, we object to the introduction of this charter in evidence, on the ground that it is immaterial and irrelevant to any issue in this case; on the further ground that the Waters-Pierce Oil Company is not shown to have any connection with this company; and on the further ground that this charter antedates the formation, not only of the present Waters-Pierce Oil Company, but of the Waters-Pierce Oil Company incorporated in 1878; and it is not alleged in the petition and is not shown that the Standard Oil Company of Ohio ever did any business in Texas, or contemplated doing any business in Texas, or had any authority to do business in Texas.

The COURT: Have you finished your objection?

Judge PENN: Yes, sir.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon the articles of incorporation were introduced in evidence, the date thereof being January 10, 1870, the names of the incorporators being John D. Rockefeller, Henry M. Flagler, Samuel Andrews, Stephen V. Harkness, and William Rockefeller, the purpose of the corporation being the manufacture of petroleum and to deal in petroleum and its products, the capital stock being the sum of $1,000,000.00 in shares of $100.00 each, and the place of business Cleveland, Ohio. By a certificate dated February 9, 1872, and signed by John D. Rockefeller, Henry M. Flagler, Samuel Andrews and Stephen V. Harkness, Directors, it is stated that at the annual meeting held on January 1, 1872, by a vote then and there taken, all the stockholders of the company being present and voting therefor, the capital stock was increased to the sum of $2,500,000.00, the

684 names of the stockholders being as follows: John D. Rockefeller, O. E. Jennings, B. Brewster, Wm. Rockefeller, S. V. Harkness, H. M. Flagler, S. P. Handy, S. Andrews, A. Stone, Jr., and S. Witt. Said certificate further states that the whole amount of such increase of capital stock had been paid to said company in money; that no note, bill, bond, or other security, had been taken for the same or any part thereof, and that the credit of the company had not been used directly or indirectly to raise funds to pay the same or any part thereof. By a certificate dated March 10, 1875, and signed by John D. Rockefeller, Henry M. Flagler, Samuel Andrews, Oliver H. Payne, and Stephen V. Harkness, being a majority of the Board of Directors, it is stated that at a special meeting of the stockholders, by a vote then and there taken, all the stockholders of the company being present and voting therefor, the capital stock of said company was increased to the sum of $3,500,000.00, the

names of the stockholders being as follows: J. D. Rockefeller, S. V. Harkness, H. M. Flagler, S. Andrews, J. D. Rockefeller, Agent; J. D. Rockefeller, Trustee; O. H. Payne, B. Brewster, by J. D. Rockefeller, his attorney; T. P. Handy, by J. D. Rockefeller, his attorney; O. B. Jennings, by J. D. Rockefeller, his attorney; Wm. Rockefeller, by J. D. Rockefeller, his attorney; Jos. Stanley, by O. H. Payne, his attorney; A. M. McGregor, by his attorney J. D. Rockefeller; W. C. Andrews; A. J. Pouch, by J. D. Rockefeller, his attorney; F. A. Arter, by J. D. Rockefeller, his attorney; P. H. Watson, by H. M. Flagler, his attorney; I. A. Bostwick, by J. D. Rockefeller, his attorney; J. Huntington, by O. H. Payne, his attorney; D. M. Harkness, by H. M. Flagler, his attorney; Josiah Macey, by J. D. Rockefeller, his attorney; W. H. Macey, by J. D. Rockefeller, his attroney; W. T. Wardwell, by H. M. Flagler, his attorney; D. P. Eells, by J. D. Rockefeller, his attorney; S. F. Barger, by J. D. Rockefeller, his attorney; W. H. Vanderbilt, by J. D. Rockefeller, his attorney; H. W. Payne, by O. H. Payne, his attorney; I. J. Vandegrift, by O. H. Payne, his attorney; John Pitcairn, Jr., by O. H. Payne, his attorney; L. G. Harkness, by H. M. Flagler, his attorney. Said certificate further states that the whole amount of such in-
685 crease of capital stock had been paid to said company in money; that no note, bill, bond or other security had been taken for the same or any part thereof, and that the credit of the company had not been used directly or indirectly to raise funds to pay the same or any part thereof.)

Mr. ALLEN: We next offer in evidence certified copy of the charter of the Waters-Pierce Oil Company, filed in the office of the Secretary of State of the State of Missouri on the first day of May, 1878; and the amendment also, increasing the capital stock, is offered.

Judge PENN: We make the objection to this certified copy and the amendment that they are immaterial and irrelevant to any issue in this case, and relate to a company not a party to this suit.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon the articles of association of the Waters-Pierce Oil Company were introduced in evidence, dated May 1, 1878, the objects for which the company was formed being dealing in naval stores and dealing in and compounding petroleum and other oils and all the products thereof and buying and selling the same in the State of Missouri and other States; the capital stock being $100,000.00, divided into one thousand shares of $100.00 each; the directors to manage the affairs of the company during the first year being William H. Waters, Henry C. Pierce, Horace A. Hutchins, Frank D. Carley, and William P. Thompson, and the names of the incorporators being the same as the directors. By a statement dated June 13, 188?, it is shown that at a meeting of the stockholders of the Waters-Pierce Oil Company held at the office of the company in the city of St. Louis on said date, pursuant to notice, there were present in person or by proxy William H. Waters, representing 400 shares; F. D. Carley, representing 200 shares; H. A. Hutchins, representing one share; W. P. Thompson, representing one share; and George

H. Vilas, M. R. Keith and George F. Chester, Trustees, by
686 proxy, representing 398 shares, the same being all the shares of the stock of the company; that thereupon on motion it was unanimously resolved that the capital stock of the company be increased from $100,000.00 to $400,000.00; that thereupon the additional stock was subscribed and paid for in cash as follows: Chess-Carley Company, 600 shares, $60,000.00; Wm. H. Waters, 1200 shares, $120,000.00; Trustees of Standard Oil Trust, 1200 shares, $120,000.00—aggregating $300,000.00.)

Mr. ALLEN: We next offer in evidence the Standard Oil Trust Agreement, that is copied and set out in our petition, and in that connection we offer in evidence first an agreement to the effect that this is a true copy, and some other facts in connection with it. I do not care to read at this time the Trust Agreement, it having been read, but I want to call attention to a few sections of it.

Judge PENN: If the Court please, we object to the introduction in evidence of the alleged Standard Oil Trust Agreement, on the ground that it is immaterial and irrelevant to any issue in this case; on the further ground that it appears from the face of it and from the allegations in the petition to have been made prior to the organization of this defendant; and on the further ground that it appears to have been entered into prior, not only to the present anti-trust law of this State, but prior to any other anti-trust law of this State; and on the further ground that it appears from the allegations in the petition that the Waters-Pierce Oil Company was not a party to said Trust Agreement; and on the further ground that it appears from the Agreement that the defendant was not a party to this Trust Agreement; and on the further ground that it appears from the Agreement that this Standard Oil Trust was dissolved in 1892, long prior to the organization of this defendant, and long prior to the enactment of either the anti-trust act of 1899 or the anti-trust act of 1903.

The COURT: Does it appear that the Waters-Pierce Oil
687 Company—what is the stipulation?

Mr. ALLEN: The stipulation is that the Waters-Pierce Oil Company as a corporation did not sign the Agreement, but a majority of the stock was put up under the agreement.

(The stipulation was read to the Court by Judge Penn, as follows:

"In lieu of the testimony of Mr. John D. Archbold and to avoid the expense of taking his testimony, it is agreed between the respective counsel for plaintiff and defendant in the above cause as follows:

"That the copy of the agreement commonly called the Standard Oil Trust Agreement, entered into as of the date of January 2, 1882, and the supplemental agreement dated the 4th of January, 1882, marked respectively Exhibits A and B of plaintiff's first amended original petition in said cause and set forth therein, are true copies of said agreements and may be read in evidence in this cause with the same force and effect as the originals of said agreements if properly proven up, subject to all objections that could be urged against

the originals if offered in evidence, except the proof of its execution, and the correctness of the copy and the production of the original is waived. All other objections may be urged against the introduction of this copy that could be urged against the introduction of the original.

"It is further stipulated and agreed that the Waters-Pierce Oil Company, as a corporation, did not sign either the agreement or the supplemental agreement; that Mr. Henry Clay Pierce, who at that time owned substantially 40 per cent of the stock of the Waters-Pierce Oil Company, did not sign either of said agreements nor deposit any part of his stock under either of them.

"It is further stipulated and agreed that Mr. Horace A. Hutchins and Mr. W. P. Thompson, at the date of said agreement, owned substantially 40 per cent of the stock of the Waters-Pierce Oil Company, signed said agreement and deposited their stock thereunder; that the Chess-Carley Company, at said date, owned substantially 20 per cent of the stock of the Waters-Pierce Oil Company, did
688 not sign said agreement, but deposited said shares under said agreement.

"It is further stipulated and agreed that from the date of the organization of the Standard Oil Trust, in accordance with the agreements herein referred to, the Trustees of the Standard Oil Trust owned and held substantially 60 per cent of the capital stock of the Waters-Pierce Oil Company and continued to hold and own the same until the year 1892.

"It is further stipulated and agreed that the Waters-Pierce Oil Company alluded to in this stipulation is the corporation organized under the laws of Missouri in May, 1878.

"This stipulation and the original trust agreements, as set forth in plaintiff's first amended original petition, shall be offered in evidence with the same force and effect and subject to all the objections as if the same were the testimony of said John D. Archbold and given in accordance with law in this cause.")

Judge PENN: And in this stipulation the right to make any legal objection to these copies offered in evidence is reserved, with the exception that we are not entitled to make the objection that it is a copy, and we do not make that.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

Mr. ALLEN: Now, the Trust Agreement and the supplement we offer, that has been read to the jury as set out in the petition. Of course, we will not re-read it at this time, but we offer the whole of it in evidence.

Judge PENN: If the Court please, Your Honor understood our objection as going, not only to the original Trust Agreement, but to the supplement?

The COURT: The Standard Oil Trust Agreement and the agreement of counsel with reference to it?

Mr. ALLEN: There is a supplemental Trust Agreement, also.

Judge PENN: Made two days later. We intend all these
689 objections to go to the supplement to the Trust Agreement, as well as the original document.

The COURT: You may have your exception to the admission of any part of it.

Judge PENN: If Your Honor will permit, we desire to interpose an additional objection to this Trust Agreement and the supplement to it, on the ground that it appears that both the original and the supplement were made outside of the State of Texas, and do not either of them relate to any business transacted in the State of Texas.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon the Trust Agreement and the supplement thereto were introduced in evidence, being the same as the exhibits attached to plaintiff's petition herein, which are here referred to in order to save repetition.)

Mr. ALLEN: We next offer in evidence the certified copy of the charter and amendments thereto of the Standard Oil Company of New Jersey, incorporated under the laws of New Jersey.

Judge PENN: If the Court please, we object to the introduction of this certified copy of the charter in evidence, and the amendments, on the ground that they are immaterial and irrelevant to any issue in this case; on the further ground that it is not made to appear, either by allegations in the petition or from this charter itself, that the Standard Oil Company of New Jersey or the Standard Oil Company ever had authority to do business in Texas, either by the terms of its charter, or by a permit obtained from the State of Texas, or that it ever contemplated doing business in Texas; and on the further ground that it appears from the face of the charter that it was not such a corporation as could obtain or could have ever obtained a permit to do business in Texas—that is, since the date on
690 which this defendant obtained its permit to do business in this State. In amplification of the objection that it was not such a corporation as could have obtained a permit to do business in Texas, we assign as one of the reasons for that objection that it appears from this charter that the company was organized, and by the various amendments to its charter authorized, to transact a large number of businesses, and that by the laws of this State a foreign corporation could not obtain a permit to do business in Texas for more than one purpose, and it is not alleged or claimed that this company, but for the matters alleged in the petition, would have ever obtained or sought a permit to do an oil business in Texas. We make the further objection that the charter of a corporation organized under the laws of a sister State can not be held to be evidence of a conspiracy to violate the laws of another State.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon the charter and amendments thereto were introduced in evidence, dated August 1, 1882, the incorporators being H. M. Flagler, T. C. Bushnell and James McGee; the name of the corporation being "Standard Oil Company of New Jersey," and the business of the company to be carried on at Bayonne, Communipaw

and other points in the State of New Jersey, and in the City of New York, the principal part of the business within the State to be transacted at Bayonne. The objects for which said company was formed are stated to be, the refining of petroleum; the manufacturing of the various products thereof; the purchasing of the crude matarial and the sale of the manufactured products thereof; the manufacture of barrels, boxes, cans and other packages in which the manufactured products may be kept or transported; the manufacture and restoration of acids and whatever other substances may be used in the manufacture of the products of petroleum. The total amount of the capital stock as stated to be $3,000,000.00, divided into 30,000 shares of the par value of $100.00 each. The names and residences of the stockholders, and the number of shares held by each,
691 are as follows: H. M. Flagler of New York City, one share; Paul Babcock, Jr., of Jersey City, one share; James McGee of Plainfield, New Jersey, one share; Thos. C. Bushnell, of Morristown, New Jersey, one share; John D. Rockefeller of Cleveland, Ohio, Wm. Rockefeller of New York City, J. A. Bostwick of New York City, John D. Archbold of New York City, O. H. Payne of Cleveland, Ohio, Wm. G. Warden of Philadelphia, Pa., Benj. Brewster of New York City, Chas. Pratt of Brooklyn, N. Y., and H. M. Flagler of New York City, Trustees of Standard Oil Trust, 29,996 shares. By a certificate dated March 5, 1892, and signed by Paul Babcock, Jr., President, and attested by L. D. Clarke, Secretary, it is stated that the Standard Oil Company of New Jersey proposes to increase its capital stock by adding thereto $7,000,000.00, divided onto 70,000 shares of $100.00 each, making the entire capital stock $10,000,000.00, that amount having been determined by the Board of Directors at a meeting held March 4, 1892, to which increase stockholders owning more than two-thirds in value of the existing capital stock had assented. The assent to the increase is signed by Paul Babcock, Jr., J. H. Alexander, T. C. Bushnell, and by H. M. Flagler, W. H. Tilford, J. D. Rockefeller, John D. Archbold, H. H. Rogers, Wm. Rockefeller and O. B. Jennings, Trustees of Standard Oil Trust. By a certificate signed by Paul Babcock, Jr., J. H. Alexander and T. C. Bushnell, Directors, it is stated that the name of the corporation is changed from "Standard Oil Company of New Jersey" to "Standard Oil Company." By a certificate dated March 23, 1892, and signed by Paul Babcock, Jr., President, and attested by L. D. Clarke, Secretary, it is stated that the Board of Directors had authorized the issue of 60,000 shares to increase the capital stock, the par value of each share being $100.00. By a certificate dated March 30, 1892, signed by Paul Babcock, Jr., President, and attested by L. D. Clarke, Secretary, the number of directors of the company was increased from three to nine, the stockholders assenting
692 thereto being Paul Babcock, Jr., J. H. Alexander, T. C. Bushnell, W. H. Tilford, John D. Archbold, H. H. Rogers, O. R. Jennings, Wm. Rockefeller, Trustees of Standard Oil Trust, by Wm. Rockefeller, attorney in fact. Pursuant to a resolution passed by the Board of Directors, a meeting of the stockholders was held at the principal office of the company in Bayonne, New Jersey, on the 14th day of June, 1899, and at said meeting a resolution was adopted

changing the charter of the company. In the amendment the objects for which the company was formed are stated to be: "To do all kinds of mining, manufacturing and trading business; transporting goods and merchandise by land or water in any manner; to buy, sell, lease and improve lands; build houses, structures, vessels, cars, wharves, docks and piers; to lay and operate pipe lines; to erect and operate telegraph and telephone lines and lines for conducting electricity; to enter into and carry out contracts of every kind pertaining to its business; to acquire, use, sell and grant licenses under patent rights; to purchase or otherwise acquire, hold, sell, assign and transfer shares of capital stock and bonds or other evidences of indebtedness of corporations, and to exercise all the privileges of ownership including voting upon the stocks so held; to carry on its business and have offices and agencies therefor in all parts of the world, and to hold, purchase, mortgage and convey real estate and personal property outside the State of New Jersey." The total authorized stock of the corporation is stated to be $110,000,000.00, divided into 1,100,000 shares of the par value of $100.00 each. Of said stock, the 100,000 shares now issued and existing shall be preferred stock, and the increase of 1,000,000 shares shall be common stock. The charter was also amended in a number of particulars not deemed necessary to be set out here. These changes in the charter were assented — by more than two-thirds of the stockholders, the names of those signing the assent being as follows: Paul Babcock, J. H. Alexander, and the following, all of whom were represented and their names signed by Paul Babcock, their attor-
693 ney: John D. Archbold, Emma B. Auchencloss, Charles C. Burke, Frederick F. Brewster, E. T. Bedford, W. H. Beardsley, Wm. V. Brokaw, W. E. Bemis, George B. Bonnell, Henry H. Bonnell, James M. Constable, Charles M. Chapin, Wm. F. Cochran, John J. Carter, E. W. Conley, Robert Darling, Jessie E. Donald, Josephine W. Dean, H. M. Flagler, H. C. Folger, Jr., Martha T. Fisk, The Farmers' Loan & Trust Co., Trustee, C. A. Griscom, Chas. W. Harkness, Lamon V. Harkness, W. L. Harkness, H. A. Hutchins, Marie Antonnette Heye, Exr., Helen Jewett Hunt, Annie D. Hogg, Chas. B. Hogg, Katharine Hogg, Robert Hogg, C. M. Higgins, Anna J. Houston, Geo. B. Bonnell, Exr., Annie B. Jennings, Esther J. Jennings, Frederic B. Jennings, Mary B. Jennings, Oliver G. Jennings, Walter Jennings, Helen J. James, Salome M. Jones, William Kennon Jewett, John S. Kennedy, Mary Lily Kenan, Charles Lockhart, Kate M. Ladd, Malcolm Lloyd, Ambrose M. McGregor, V. Everit Macy, Wm. H. Macy, Jr., Exr., Wm. H. Macy, Jr., D. O. Mills, Alexander McDonald, John G. McCullogh, Lizzie D. Moffat, The New York Life Insurance and Trust Co., Trustee, Daniel O'Day, O. H. Payne, C. M. Pratt, Trustee, C. M. Pratt, Elizabeth T. Preston, A. J. Peuch, Henry H. Rogers, John D. Rockefeller, William Rockefeller, Sarah Jewett Robbins, Francis F. Robbins, L. H. Severance, Joseph Seep, George W. Smith, James Stillman, William T. Scheide, Charles A. Sterling, Charles Stone, Joseph W. Sandford, William M. Sandford, W. H. Tilford, Catharine H. Tilford, Lewis S. Thompson, United States Trust Co. of New York, William T. Wardwell, T. H.

Wheeler, Howard Willets, Joseph Bushnell, Exr., Charles E. Welling, Howard Wood, and Julia H. York.)

Mr. ALLEN: We next offer in evidence the deposition of Ida M. Butts, residing in the city of Marietta, Ohio, on interrogatories propounded to her by the plaintiff.

Interrogatory 1. What is your name and where do you live, and what business are you and have you been connected with?

694 Answer. My name is Ida M. Butts. My residence Marietta, Ohio. I am in the lumber business and have been connected with the oil business.

Interrogatory 2. If you say you have been in the oil business, state with whom you were connected in that business, and state the extent and character of his connection with that business.

Answer. With George Rice. He was a producer and refiner of petroleum. He had a refinery at Marietta, Ohio, and shipped refined oil to nearly all States in the Union, including Texas.

Interrogatory 3. State whether or not George Rice was at any time connected with the Standard Oil Trust.

Answer. He was a member of the Standard Oil Trust, in that he owned Standard Oil Trust certificates.

Interrogatory 4. In what year was the Standard Oil Trust organized?

Answer. In the year 1882.

Interrogatory 5. Is George Rice dead or alive? If dead, when did he die, and who administered upon his estate?

Answer. He is dead. He died February 27, 1905. I am administratrix of the estate.

Interrogatory 6. State whether or not at the time of his death George Rice held any Standard Oil Trust certificates, and state who has his certificates at this time, and if you say you have them, state how long you have had them, and in what capacity.

Answer. He did. I have them, since his death in the capacity of administratrix.

Interrogatory 7. State whether or not during the time the certificates were held by Mr. Rice or by you as administratrix a suit was brought in the State of Ohio to dissolve the Standard Oil Trust. If so, state the history and result of this litigation, and state what was done by the Standard Oil Trust with reference to dissolution upon that judgment being rendered, and state what has been done

695 by the trustees of the Standard Oil Trust and by George Rice and yourself as holders of the certificates aforesaid concerning these certificates.

Judge PENN: If the Court please, we desire to object to the answer of the witness to this question,—as to the answer and that portion of the question relating to asking the witness with reference to a suit to dissolve the Standard Oil Trust, and to state the history and result of this litigation, and to state what was done by the Standard Oil Trust with reference to dissolution upon that judgment being rendered. We make the objection that the statement of the witness with reference to these matters is not the best evidence, and is inadmissible for that reason; further, that her answer appears to be hear-

say; and further, that it appears to be the mere conclusion of the witness with reference to these matters; and as to the portion of the answer in which she undertakes to detail what was done by the Trustees of the Standard Oil Trust and by George Rice after the dissolution of the Standard Oil Trust, that it appears to be hearsay and merely the conclusion of the witness. With reference to the last paragraph in her answer,—the second paragraph,—we make the further objection that her answer appears to be hearsay, and merely her conclusion; and, further, that as to what laws were passed in the State of New Jersey and what was done with reference to procuring an amendment to the charter of the Standard Oil Company, her statements are not the best evidence of what was done.

The COURT: Are you objecting to the entire answer?

Judge PENN: Yes, sir. We are objecting to the entire answer and making the objection more specific as to certain portions. We object to the entire answer on the general ground that the entire answer appears to be hearsay and but her conclusions as to these matters, and then we make the more specific objections stated as to these portions.

The COURT: Is there any other part of this deposition that bears on the question of whether this is hearsay or not?

Mr. ALLEN: Not that part of it. There is some of it that later on it develops is hearsay that we will not offer, but we make the
696 contention, if the Court please, that this does not appear to be hearsay. So far as her testimony about the suit being brought, that is just incidental. It is not necessary to introduce the written record to show that. So far as what she says about the testimony of Archbold, that is not hearsay, because she makes it her own testimony by specific terms. She just simply says that Archbold gives it in better language than she could, and it is not disclosed that any part of it is hearsay by this answer. She may have been present at all these transactions and known all about them personally.

The COURT: The objection is overruled.

Judge PENN: We want to make another objection. I think I can call your attention to other parts of this that will make it appear it is hearsay, if you will give us a moment's time. If the Court please, we except to the ruling that was made, and we desire now to make more specific objections. As to the second sentence in the answer, as to what was the decision of the Supreme Court of Ohio, we make the objection again that this appears to be but the conclusion of the witness and is not the best evidence; that it is not competent for the witness to state her conclusion as to the effect of the decision or judgment of the Supreme Court of Ohio; that this should be done by properly certified or exemplified copies of that decision, so that the Court could pass upon the effect of that decision, and the Court should not be required to accept the conclusion of the witness with reference to that matter. As to the statement contained in this same sentence, as to what the Standard Oil Trust pretended to do, we object on the ground that it appears to be the mere conclusion of the witness. The witness does not claim to have been present or had any

personal knowledge of the matters in regard to which she testifies. With reference to the statement as to a large number of trust certificates being changed into assignments of legal title, we make the objection that it appears there that this is but a conclusion of the witness; that she does not profess to have been present and
697 witnessed the exchanges or the issuance of the certificates about which she testifies, that she says were given in exchange. As to the second paragraph, as to what law was passed in New Jersey, we make the objection that it is not the best evidence; that a properly certified copy of the law of New Jersey referred to would be the best evidence; further, that it is but the conclusion of the witness as to the effect of this law, and is not competent. We object to the statement in this answer that it made the Standard Oil Company to all intents and purposes the same in effect as the Standard Oil Trust, on the ground that it appears to be but the conclusion of the witness. The next sentence, "They made it a holding company for all the companies of the Standard Oil Trust," we object to on the ground that it appears to be but the conclusion of the witness about a matter about which she does not profess to have had any personal knowledge, and in which it does not appear that she was interested. We make the objection then as to her quotations of the testimony of John D. Archbold before the Industrial Commission in 1900, that the whole of her quotations from what she says was Mr. Archbold's testimony is hearsay. As to the statement contained after the quotation from Mr. Archbold's testimony, to the effect that "the Trust is not dissolved and could not be dissolved until all trust certificates were surrendered," we make the objection that it is but the conclusion of the witness. We add to the objections to her quotation from Mr. Archbold's testimony, it appears from her statement that her quotation is hearsay as to her, quoted by her from the Congressional Record, and that, even if authentic, the testimony of Mr. Archbold before this Commission would be hearsay, and not admissible as against this company in this case, it appearing that Mr. Archbold was testifying there as an individual, and not in the discharge of any duty with reference to the Standard Oil Company, or with reference to this company.

The COURT: The objection to the quotation from the testimony of Archbold is sustained. Otherwise it is overruled.

698 Judge PENN: The defendant excepts.

Mr. ALLEN: The State excepts to the sustaining of so much of the objection as is sustained.

Answer. While the certificates were held by George Rice, there was suit brought by the Attorney General of the State of Ohio in the State of Ohio to force the Standard Oil Company of Ohio out of the Standard Oil Trust or cause it to cease doing business in the State if it remained in the Trust. The decision of the Supreme Court of Ohio was in favor of the State, and the Standard Oil Trust then pretended to go out of existence, and to this effect caused an order to be issued to all certificate holders, including George Rice, to exchange their Trust Certificates into certificates called Assignment of Legal Title. A few certificates were exchanged, but both kinds were traded

in on the market and nothing more was done to liquidated the Trust until 1897, when the Standard Oil Company of Ohio was brought before the Supreme Court of Ohio in contempt proceedings brought by the Attorney General. The Standard Oil Trust then began to bestir itself and a larger number of Trust Certificates were exchanged into Certificates of Assignment of Legal Title. They then increased the capital stock of the Standard Oil Company of New Jersey, and made it to all intents and purposes the same in effect as the Standard Oil Trust. They made it the holding company for all the companies of the Standard Oil Trust. The Trust is not dissolved, and could not be dissolved until all Trust Certificates were surrendered. George Rice's estate holds one Standard Oil Trust Certificate of six shares, one certificate of the Liquidating Trustees called Assignment of Legal Title, and Scrip in the twenty different corporations then in the Trust, which he obtained by having one Assignment of Legal Title exchanged for them.

Mr. ALLEN: We do not offer about that Trust Agreement, any of the answers as to that, because we already have it in.

Mr. BRADY: That is numbers 8, 9 and 10. We want to
699 offer number 11, I think.

Mr. ALLEN: We do not offer 8, 9 and 10. (After consultation): We offer in evidence the answer to the 10th interrogatory.

Interrogatory 10. Give the names of all the parties to the original Standard Oil Trust Agreement, including the names of individuals, firms and corporations participating in the formation of that Trust, or coming into it afterwards.

Judge PENN: If the Court please, we object to the first part of this witness' answer, in which she undertakes to state the parties originally entering into this Trust Agreement, on the ground that it is not the best evidence. Second, on the ground that it encumbers the record, because what is alleged to be a true copy of the original agreement, and what has been agreed to be a true copy of the original agreement, has been admitted in evidence by Your Honor. And as to the second paragraph of the witness' answer, in which she undertakes to detail what other parties subsequently became parties to this Trust, or entered into it, we make the objection that the answer appears to be but the conclusion of the witness. She does not profess by her answer to have been present when any other person or corporation signed this agreement or any other agreement making them parties to this Trust Agreement, nor to have witnessed the deposit of any stock or other papers with the Standard Oil Trust or its trustees, but the whole answer clearly appears to be a conclusion of the witness as to this matter.

Mr. ALLEN: So far as the first part of it is concerned, if Your Honor please, we just simply offer that for the purpose of identification of the names.

Judge PENN: And, if the Court please, it appears from the terms of the Trust Agreement, which has been offered in evidence, that parties could subsequently become parties to that Trust Agreement only by an instrument in writing, and we make the further objection

that the instrument in writing by which parties subsequently
700 became parties to that instrument is the best evidence of their becoming such parties.

Mr. ALLEN: I will explain to the Court that the first part of the answer is not offered, except for identification. It is a matter of fact, and two subdivisions state the names of the parties and the corporations that are named in the Trust Agreement that has been read in evidence, but the third paragraph of her answer, that Your Honor will find there, goes on to say then that these people,—of course, it is in evidence,—that they signed that Trust Agreement, but she states as a fact then that they went into the Trust—states that as a fact—and then, in addition to that, states that others afterwards came in and became parties to the Trust, and names them, and we offer that. The other is just simply for the purpose of identification, to show the names of the parties that originally went in. We do not care so much about that, except merely for identification. So far as encumbering the record is concerned, they are exactly the same questions that have heretofore been offered. The third subdivision, all of them, are not. The sole purpose of offering it is to show who became parties to that Trust, both at its original formation and subsequently up to 1896.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

Answer. (1) All the stockholders and members of the following corporations and limited partnerships, to-wit: Acme Oil Company, New York; Acme Oil Company, Pennsylvania; Atlantic Refining Company of Philadelphia; Bush & Company (Limited); Camden Consolidated Oil Company; Elizabethport Acid Works; Imperial Refining Company (Limited); Charles Pratt & Co.; Paine, Abbett & Co.; Standard Oil Company, Ohio; Standard Oil Company, Pittsburg; Smith's Ferry Oil Transportation Company; Solar Oil Company (Limited); Sone & Fleming Manufacturing Company (Limited). Also, all the stockholders and members of such other corporations and limited partnerships as may thereafter join in this agreement, at the request of Trustees therein provided for.

701 (2) The following individuals, to-wit: W. C. Andrews, John D. Archbold, Lide K. Arter, J. A. Bostwick, Benjamin Brewster, D. Bushnell, Thomas C. Bushnell, J. N. Camden, Henry L. Davis, H. M. Flagler, Mrs. H. M. Flagler, John Huntington, H. A. Hutchins, Charles F. G. Heye, O. B. Jennings, Charles Lockhart, A. M. McGregor, William H. Macy, William H. Macy, Jr., Estate of Josiah Macy, William H. Macy, Jr., Executor, O. H. Payne, A. J. Pouch, John D. Rockefeller, William Rockefeller, Henry H. Rogers, W. P. Thompson, J. J. Vandergrift, William T. Wardwell, W. G. Warden, Joseph L. Warden, Warden, Frew & Co., Louise C. Wheaton, H. M. Hanna and George W. Chapin, D. M. Harkness, D. M. Harkness, Trustee, S. V. Harkness, O. H. Payne, Trustee, Charles Pratt, Horace A. Pratt, C. M. Pratt, Julia H. York, George H. Vilas, M. R. Keith, Trustees, George F. Chester. Also, all such individuals as may thereafter join in the agreement at the request of the trustees therein provided for. (3) A portion of the stockholders

and members of the following corporations and limited partnerships, to-wit: American Lubricating Company; Baltimore United Oil Company; Beacon Oil Company; Bush & Denslow Manufacturing Company; Central Refining Company of Pittsburg; Cheesebrough Manufacturing Company; Chess-Carley Company; Consolidated Tank Line Company; Inland Oil Company; Keystone Refining Company; Maverick Oil Company; National Transit Company; Portland Kerosene Oil Company; Producers' Consolidated Land and Petroleum Company; Signal Oil Works (Limited); Thompson & Bedford Company (Limited); Devoe Manufacturing Company; Eclipse Lubricating Oil Company (Limited); Empire Refining Company (Limited); Franklin Pipe Company (Limited); Galena Oil Works (Limited); Galena Farm Oil Company (Limited); Germania Mining Company; Vacuum Oil Company; H. C. Van Tine & Company (Limited); Waters-Pierce Oil Company. Also, stockholders and members (not being all thereof) of other corporations and limited partnerships who might thereafter join in said agreement at the request of the trustees therein provided for. The above com-
702 panies, limited partnerships and individuals participated in the formation of the original trust. Others were added until in the early part of the year 1896 there were twenty companies in the great grand divisions of the Trust, as follows: The Atlantic Refining Company, Pennsylvania; The Standard Oil Company of Kentucky; the Buckeye Pipe Line Company, Ohio; New York Transit Company, New York; National Transit Company of Pennsylvania; The Solar Refining Company of Ohio; The Northwestern Ohio Natural Gas Company, Ohio; Union Tank Line Company, New Jersey; Southern Pipe Line Company, Pennsylvania; Northern Pipe Line Company, Pennsylvania; The Eureka Pine Line Company, West Virginia; Indiana Pipe Line Company, Indiana; Standard Oil Company of Indiana; Standard Oil Company of New York; Standard Oil Company of New Jersey; Standard Oil Company of Ohio; The Ohio Oil Company, Ohio; Forest Oil Company, Pennsylvania; South Penn Oil Company, Pennsylvania; The Anglo-American Oil Company (Limited).

Interrogatory 11. State whether or not the certificate owned by you as administratrix is still in your possession. If so, please attach a copy of same to your answer, and make it a part thereof, and also attach any other papers appertaining to said certificate and mark these for identification.

Answer. It is. The original Trust Certificate for six shares is in my possession, and I attach a copy of the same to my answer and make it a part hereof, marking said copy Exhibit B. There is also a copy of this same certificate contained in my Exhibit A hereto attached, at page 37 thereof. I have also one share of Assignment of Legal Title issued by the Liquidating Trustees and also Scrip or Fractional Shares in the twenty different companies in the Trust as given by them in 1896, as named in the last list in my answer to the tenth interrogatory above, but I do not consider that these appertain to that certificate.

Judge PENN: If the exhibits referred to are offered we want to make an objection.

703 Mr. BRADY: We offer them in connection with this answer.

Judge PENN: Are you offering "A"?

Mr. ALLEN: No; that is that pamphlet.

Judge PENN: You offer exhibit "B." We object to the exhibit offered in evidence, purporting to be a copy of a certificate, on the ground, first, that it is immaterial and irrelevant; second, on the ground that there is no proof of the execution of the original by the parties purporting to have executed it, and, consequently, a copy of the original is not admissible in evidence. A copy could not be admitted in evidence without proof first having been made of the execution of the original.

Mr. ALLEN: She testifies that they issued that certificate to Rice, and it is immaterial as to who executed it. She says they issued it to him.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon Exhibit "B" was introduced in evidence, and it reads as follows:

Shares $100 Each.

Standard Oil Trust.

Number 8618. Shares 6.

This is to certify that George Rice is entitled to Six Shares in the equity to the property held by the Trustees of the Standard Oil Trust, transferable only on the books of said Trustees on surrender of this Certificate. This Certificate is issued upon condition that the holder or any transferee thereof shall be subject to all the provisions of the agreement creating said Trust and of the by-laws adopted in pursuance of said agreement as fully as if he had signed the said Trust Agreement.

Witness the hands of the President, Secretary and Treas-
704 urer of the Board of Trustees, this 18th day of October, A. D. 1892, at the City of New York.

J. D. ROCKEFELLER, *President.*

H. M. FLAGLER, *Secretary.*

WM. T. WARDWELL, *Ass't Treasurer.*

(Written across face)

This certificate is issued *nunc pro tunc* in compliance with the judgment of the special term of the Supreme Court of the State of New York, City and County of New York, entered on the fourteenth day of January, 1890, in an action wherein George Rice is plaintiff and Jno. D. Rockefeller and others as Trustees of The Standard Oil Trust are defendants.

H. M. FLAGLER, *Sec'y.*

Thereupon, at 5.50 P. M., the trial was adjourned until 9.30 A. M. May 22, 1907.

WEDNESDAY, *May* 22, 1907—9.30 a. m.

Mr. ALLEN: Shall we proceed, Your Honor?

The COURT: Yes, sir.

Mr. ALLEN: Next is the twelfth interrogatory.

Interrogatory 12: If you have in your possession more than one kind of Trust Certificate, attach a copy of each to your answer, mark each for identification, and state in your answer whether or not the copy is correct.

Judge PENN: Do you propose to offer the exhibits, Mr. Allen?

Mr. ALLEN: Yes, sir.

Judge PENN: If the Court please, we object to the intro-
705 duction in evidence of the exhibits referred to in this answer, being copies, as she states, of certain instruments, on the ground that there is no proof of the execution of the originals of these instruments by the parties purporting to have executed the same, and that, the execution of the originals not being proven, the copies are not admissible in evidence; and we object to the answer, Your Honor, with reference to whether or not she has in her possession the instruments referred to, on the ground that the execution of these instruments is not proven, and their execution not being proven, the question as to whether or not she is in possession of instruments of the character described is immaterial. Here is the question and the answer objected to (handing same to the Court).

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. As stated in my answer to the seventh interrogatory, I have in my possession, besides the Standard Oil Trust Certificate of six shares, a certificate of the Liquidating Trustees, called an Assignment of Legal Title, and one certificate of ownership of fractional shares or scrip in each of the twenty constituent companies named in the last list in my answer to the tenth interrogatory above. I attach a copy of the certificate of the Liquidating Trustees and of each of said scrip certificates to this deposition as a part of my answer to this interrogatory, each marked Exhibit C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, and W, respectively, and identified further by my initials signed by me thereunder. Steps are now being taken to exchange the share of Assignment of Legal Title hereinbefore referred to into a share in The Standard Oil Company of New Jersey.

Thereupon the Exhibits referred to in the foregoing answer were introduced in evidence and read as follows:

706 EXHIBIT C.

Number A 18668.

Assignment of Legal Title to Stocks Heretofore Represented by One Shares Standard Oil Trust.

Whereas George Rice is the owner of equitable title to 1/972,500 of the amount of corporate stocks held by the Trustees of The Stand-

ard Oil Trust in each of the several corporations whose stocks were held by said Trust on the first day of July, A. D. 1892, which equitable ownership was represented by one shares of Standard Oil Trust surrendered for cancellation. Now we, the Trustees in whose names the legal title to said stock stands, do hereby assign and transfer to George Rice and his assigns the legal title to the aforesaid amount of the said stocks, and authorize the proper officers of the several corporations to transfer upon their books and to issue corporate certificates for the required amount of their respective capital stocks upon presentation and cancellation of this assignment. The several corporations will issue stock certificates for whole shares and scrip for fractions of shares, and upon presentation of fractional share scrip sufficient for the purpose, certificates for whole shares will be issued. When transfer of stock upon the corporate books is desired by virtue of this assignment, it must be placed in the hands of an attorney in fact both for the assignee and the undersigned Trustees, and said attorney shall first obtain the proper certificates and scrip from all the several companies, and thereupon shall deliver the certificate to the Trustees and the stock certificates and scrip to the party or parties entitled thereto.

JOHN D. ROCKEFELLER,
WILLIAM ROCKEFELLER,
HENRY M. FLAGLER,
JOHN D. ARCHBOLD,
HENRY H. ROGERS,
WESLEY H. TILFORD,
OLIVER H. PAYNE,
CHARLES M. PRATT,
CHARLES W. HARKNESS,
Trustees.

F. L. BARSTOW,
Ass't Secretary.
W. H. TILFORD,
Attorney in Fact.

New York, May 15, 1899.

707 (EXHIBIT D.)

No. S 18.

50,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Pennsylvania.

The Atlantic Refining Company.

Scrip.

This certifies that J. L. Kemper is the owner of fifty thousand 972,500ths of one share of stock in The Atlantic Refining Company. The holder or assignee of this Scrip will be entitled to a

Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer, at Philadelphia, Pa., this 17th day of March, 1896.

JAS. McGEE, *President.*

[SEAL.]
C. E. BUSHNELL, *Treasurer.*

(EXHIBIT E.)

No. S 18.

10,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Kentucky.

Standard Oil Company.

Scrip.

This Certifies that J. L. Kemper is the owner of one share of stock in the Standard Oil Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

708 Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at Louisville, Ky., this 17th day of March, 1896.

ALEX. McDONALD, *President.*

[SEAL.]
L. W. BOND, *Secretary.*

(EXHIBIT F.)

No. S 17.

200,000/972,500 of One Share. Whole Shares $50 Each.

Incorporated under the Laws of the State of Ohio.

The Buckeye Pipe Line Company.

Scrip.

This Certifies that J. L. Kemper is the owner of Two Hundred Thousand 972,500ths of one share of stock in The Buckeye Pipe Line Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the cor-

porate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer, at Lima, Ohio, this 17th day of March, 1896.

C. N. PAYNE,
2nd Vice President.
J. R. CAMPBELL, *Treasurer.*

[SEAL.]

H. McSWEENEY, *Secretary.*

709

(EXHIBIT G.)

No. S 16.

50,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of New York.

New York Transit Company.

Scrip.

This Certifies that J. L. Kemper is the owner of Fifteen Thousand 972,500ths of one share of stock in the New York Transit Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by signatures of its President and Secretary, at New York City, this 17th day of March, 1896.

H. H. ROGERS, *President.*

[SEAL.]

JOHN BUSHNELL, *Secretary.*

(EXHIBIT H.)

No. S 11.

509,104/972,500 of One Share. Whole Shares $60 Each.

Incorporated under the Laws of the State of Pennsylvania.

National Transit Company.

Scrip.

This Certifies that J. L. Kemper is the owner of Five hundred nine thousand one hundred and four 972,500ths of one share of

stock in the National Transit Company. The holder or assignee of this Scrip shall be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on
710 presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer at Philadelphia, Pa., this 20th day of February, 1896.

H. H. ROGERS, *President.*

[SEAL.]
GEO. W. COTTON, *Treasurer.*

(EXHIBIT I.)

No. S 18.

5,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Ohio.

The Solar Refining Company.

Scrip.

This Certifies that J. L. Kemper is the owner of Five thousand 972,500ths of one share of stock in The Solar Refining Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at Lima, Ohio, this 2nd day of April, 1896.

JNO. D. ARCHBOLD, *President.*

[SEAL.]
F. C. BORGES, *Secretary.*

711 (EXHIBIT J.)

No. S 17.

32,785/972,500 of One Share. Whole Shares $60 Each.

Incorporated under the Laws of the State of Ohio.

The Northwestern Ohio Natural Gas Company.

Scrip.

This Certifies that J. L. Kemper is the owner of Thirty-two thousand seven hundred eighty-five 972,500ths of one share of stock in

The North Western Ohio Natural Gas Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at Fostoria, Ohio, this 17th day of March, 1896.

C. N. PAYNE,
Vice President.

[SEAL.]
GEO. W. COTTON, *Secretary.*

(EXHIBIT K.)

No. S 16.

35,200/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of New Jersey.

Union Tank Line Company.

Scrip.

This Certifies that J. L. Kemper is the owner of Thirty-five thousand 972,500ths of one share of stock in the Union Tank Line Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

712

Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at Bayonne, N. J., this 31st day of March, 1896.

W. H. TILFORD, *President.*

[SEAL.]
H. R. PAYNE, *Secretary.*

(EXHIBIT L.)

No. S 17.

50,000/972,500 of ...e Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Pennsylvania.

Southern Pipe Line Company.

Scrip.

This Certifies that J. L. Kemper is the owner of Fifty thousand 972,500ths of one share of stock in the Southern Pipe Line Com-

pany. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer, at Oil City, Pa., this 17th day of March, 1896.

H. H. ROGERS, *President.*

[SEAL.]
GEO. W. COTTON, *Treasurer.*

713 (EXHIBIT M.)

No. S 17.

10,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Pennsylvania.

Northern Pipe Line Company.

Scrip.

This certifies that J. L. Kemper is the owner of Ten thousand 972,500ths of one share of stock in the Northern Pipe Line Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer, at Oil City, Pa., this 17th day of March, 1896.

H. H. ROGERS, *President.*

[SEAL.]
GEO. W. COTTON, *Treasurer.*

(EXHIBIT N.)

No. S 17.

50,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of West Virginia.

The Eureka Pipe Line Company.

Scrip.

This Certifies that J. L. Kemper is the owner of Fifteen Thousand 972,500ths of one share of stock in The Eureka Pipe Line Company.

The holder or assignee of this Scrip shall be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

714 Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer, at Oil City, Pa., this 17th day of March, 1896.

C. N. PAYNE,
2nd Vice President.
J. R. CAMPBELL, *Treasurer.*

[SEAL.]
H. McSWEENEY, *Secretary.*

(EXHIBIT O.)

No. S 17.

20,000/972,500 of One Share. Whole Shares $50 Each.

Incorporated under the Laws of the State of Indiana.

Indiana Pipe Line Company.

Scrip.

This Certifies that J. L. Kemper is the owner of Twenty thousand 972,500ths of one share of stock in the Indiana Pipe Line Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporation books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at Whiting, Ind'a, this 19th day of March, 1896.

H. H. ROGERS, *President.*

[SEAL.]
JOHN BUSHNELL, *Secretary.*

715 (EXHIBIT P.)

No. S 18.

10,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Indiana.

Standard Oil Company.

Scrip.

This Certifies that J. L. Kemper is the owner of Ten thousand 972,500ths of one share of stock in the Standard Oil Company. The

holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at Whiting, Ind., this 17th day of March, 1896.

W. H. TILFORD, *President.*

[SEAL.]
G. W. SIDHI, *Ass't Secretary.*

(EXHIBIT Q.)

No. S 18.

70,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of New York.

Standard Oil Company of New York.

Scrip.

This Certifies that J. L. Kemper is the owner of Seventy thousand 972,500ths of one share of stock in the Standard Oil Company of New York. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.
716

Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at the City of New York, this 17th day of March, 1896.

WM. ROCKEFELLER, *President.*

[SEAL.]
N. H. BRAINARD, *Ass't Secretary.*

(EXHIBIT R.)

No. S 18.

100,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of New Jersey.

Standard Oil Company.

Scrip.

This Certifies that J. L. Kemper is the owner of One hundred thousand 972,500ths of one share of stock in the Standard Oil Company. The holder or assignee of this Scrip will be entitled to a

Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at Bayonne, N. J., this 17th day of March, 1896.

J. H. ALEXANDER,
2nd Vice President.

[SEAL.]
A. H. BRAINARD, *Ass't Secretary.*

717

(EXHIBIT S.)

No. S 17.

35,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Ohio.

The Standard Oil Company.

Scrip.

This Certifies that J. L. Kemper is the owner of Thirty Five Thousand 972,500ths of one share of stock in the Standard Oil Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at Columbus, Ohio, this Second day of April, 1896.

JOHN D. ROCKEFELLER, *President.*

[SEAL.]
F. B. SQUIRE, *Secretary.*

(EXHIBIT T.)

No. S 17.

80,000/972,500 of One Share. Whole Shares $25 Each.

Incorporated under the Laws of the State of Ohio.

The Ohio Oil Company.

Scrip.

This Certifies that J. L. Kemper is the owner of Eighty Thousand 972,500ths of one share of stock in The Ohio Oil Company. The holder or assignee of this Scrip will be entitled to a Certificate of

Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

718 Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer, at Lima, Ohio, this 17th day of March, 1896.

WM. FLEMING,
1st Vice President.
F. S. BATES, *Treasurer.*

[SEAL.]
H. McSWEENEY, *Secretary.*

(EXHIBIT U.)

No. S 17.

55,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Pennsylvania.

Forest Oil Company.

Scrip.

This Certifies that J. L. Kemper is the owner of Fifty-five thousand 972,500ths of one share of stock in the Forest Oil Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer at Oil City, Pa., this Seventeenth day of March, 1896.

JNO. D. ARCHBOLD, *President.*

[SEAL.]
W. J. YOUNG, *Treasurer.*

719 (EXHIBIT V.)

No. S 17.

25,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Pennsylvania.

South Penn Oil Company.

Scrip.

This Certifies that J. L. Kemper is the owner of Twenty-five Thousand 972,500ths of one share of stock in the South Penn Oil

Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer, at Oil City, Pa., this 17th day of March, 1896.

N. F. CLARK,
Vice President.

[SEAL.]
F. S. BATES, *Treasurer.*

(EXHIBIT W.)

This Certifies that J. L. Kemper has surrendered an assignment of legal title of one share of interest in the Standard Oil Trust, and is entitled by reason thereof to 26,000/972,500 of one share of stock in the Anglo-American Oil Company, Limited, and it is hereby guaranteed that said company will deliver a certificate for one share of stock to J. L. Kemper, or his assigns, on presentation of certificates of ownership of fractional interests sufficient to entitle the owner thereof to one full share of stock in said Company.

Trustees to Liquidate.

STANDARD OIL TRUST,
720 By WM. ROCKEFELLER,
Attorney in Fact.

April 6th, 1896.

Mr. ALLEN: Now, then, the thirteenth.

Interrogatory 13. After the formation of the Standard Oil Trust, state whether or not any other companies joined in the Trust, or were incorporated by the Trust, and if so, state what companies so joined or were created by the Trust.

Judge PENN: We object to the answer of this witness, Your Honor, to this question, on the ground that it appears to be a mere conclusion of the witness; on the further ground that it appears to be hearsay; on the further ground that it is provided by the Standard Oil Trust Agreement, which has been introduced in evidence, that persons or corporations becoming parties thereto should do so by instruments in writing, and the instruments in writing are the best evidence of other parties becoming parties to that instrument; on the further ground that the witness does not claim in her answer to have any personal knowledge of the facts which she seems to think constituted these other companies parties to this trust, and it is therefore hearsay.

The COURT: Let me see it.

Mr. ALLEN: She only gives those that are known to her.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. There were other companies. Those known to me are

the following: The Atlantic Refining Company, Pennsylvania; The Standard Oil Company of Kentucky; The Buckeye Pipe Line Company, Ohio; New York Transit Company, New York; The Solar Refining Company of Ohio; The Northwestern Ohio Natural Gas Company, Ohio; Union Tank Line Company, New Jersey; Southern
721 Pipe Line Company, Pennsylvania; Northern Pipe Line Company, Pennsylvania; The Eureka Pipe Line Company, West Virginia; Indiana Pipe Line Company, Indiana; Standard Oil Company of Indiana; Standard Oil Company of New York; Standard Oil Company of New Jersey; The Ohio Oil Company, Ohio; Forest Oil Company, Pennsylvania; South Penn Oil Company, Pennsylvania; The Anglo-American Oil Company (Limited).

Interrogatory 14. After the judgment of the Supreme Court of Ohio, state what difference, if any, was made with reference to the conduct and control of the companies which had been in the Trust by the trustees of the Standard Oil Trust, and state what is the present method of controlling and managing the companies that went into the Trust.

Judge PENN: If the Court please, we object to the answer of the witness to this question, on the ground that it does not appear that the witness has any personal knowledge of the matters therein testified to, and that it appears from the answer that it is the mere conclusion of the witness.

The COURT: The objection is overruled. What is the date of this deposition?

Mr. ALLEN: It was taken the 21st day of November, 1906.

Judge PENN: Defendant excepts to the ruling of the Court.

Answer. They made little or no change until contempt proceedings were brought in 1897, when they transferred more Trust Certificates into Assignments of Legal Title Certificates and soon thereafter closed as many of them as possible into stock in The Standard Oil Company of New Jersey, which is the present method of controlling and managing the companies now in the Trust, The Standard Oil Company of New Jersey being able to hold stock of the other companies in the Trust became the holding company.

Interrogatory 15. Do you know anything about certificates issued after the judgment of the Supreme Court of Ohio, signed by John D. Rockefeller, President, certifying that the holders were entitled
722 to certain shares in the equity to the property held by the Trustees of the Standard Oil Trust? If so, state whether or not one of these certificates was issued to George Rice or to you, and copy one of these certificates and make it a part of your answer.

Judge PENN: We have covered this same matter by previous objections, and don't care to renew it.

Answer. I do. George Rice was the owner and his estate is still the owner of one of these certificates, which is called Assignment of Legal Title. I have attached a copy of this certificate to this deposition as a part of my answer to the twelfth interrogatory, as Exhibit

"C", and hereby refer to said copy and exhibit as a part of my answer to this interrogatory.

Interrogatory 16. Give all the steps which have been taken by the Standard Oil Trust, or its trustees, or what is known as the Standard Oil interests since the rendition of the judgment by the Supreme Court of Ohio in carrying out that judgment, or in invading its provisions, or as the result of that judgment.

Judge PENN: If the Court please, we object to the answer of the witness to this question, on the ground that the witness does not appear to have any personal knowledge of the matters therein stated; that the matters stated appear to be but mere conclusions of the witness; on the further ground that it appears from the answer that these were transactions—these matters she testifies about were transactions with George Rice, who, by her previous answers, is shown to be dead; that she is his administratrix, and does not appear to have been present when any of the transactions took place or had any personal knowledge of the matter.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

Answer. As a result of that judgment The Standard Oil Trust agreed to dissolve, and, in order to do this, issued certificates called
Assignments of Legal Title, signed by the Trustees to Liqui-
723 date The Standard Oil Trust to take the place of the original Standard Oil Trust Certificates. Nothing more was done, few certificates were exchanged, and both original Trust Certificates and Assignments of Legal Title Certificates were bought and sold on the market on same basis. When contempt proceedings were brought in 1897 by the Attorney General of the State of Ohio they began to get busy and changed a great many more certificates of The Standard Oil Trust into Assignments of Legal Title and then from that into the stock of The Standard Oil Company of New Jersey. Mr. George Rice insisted on having one Assignment of Legal Title transferred into corporate scrip of the various companies in the Trust, which with great reluctance they finally so transferred. This was accomplished through Mr. J. L. Kemper, in whose name the scrip in the various companies were issued, and who then transferred them to George Rice, but as they draw no dividends are probably the only ones so transferred or ever issued. The Assignment of Legal Title, marked Exhibit "C", is now in process of transfer into the stock of The Standard Oil Company of New Jersey, where it will receive dividends on the earnings of all the companies in the Trust.

Interrogatory 17. State whether or not you have in your possession as administratrix of George Rice any instruments made or executed by the Standard Oil Trust or the trustees of the Standard Oil Trust, or the trustees in liquidation of the Standard Oil Trust, or any of the successors of either of these parties concerning the matter of ownership by George Rice of an interest in the Standard Oil Trust, or any company belonging to or controlled by it. If so, attach to your answers a copy of each of these instruments, marking it for

identification, and state the circumstances under which George Rice or yourself received it.

Judge PENN: It is covered by previous objections.

Answer. I have. My answers to the former interrogatories cover all this interrogatory.

724 Mr. ALLEN: We next offer in evidence an agreement signed by counsel, being stipulation No. 1, as to stock ownership.

Judge PENN: If the Court please, we offer no objection at all to the first fact agreed to—the first paragraph in this stipulation. To the second, we object as being irrelevant and immaterial to any issue in this case—to that portion of the agreement relating to what shares of the Waters-Pierce Oil Company incorporated in 1878 were owned by the Standard Oil Company. To the third, fourth, fifth, sixth and seventh paragraphs, we object on the ground that the matters therein agreed to are immaterial and irrelevant to any issue in this case. These matters relate to the ownership by the Standard Oil Company of stock in other companies, and it does not appear that any of these other companies ever contemplated doing business in Texas, and it appears affirmatively from the agreement that neither of these companies ever did any business in Texas or ever obtained a permit to do business in Texas and never applied for a permit to do business in Texas. The eighth paragraph we object to as immaterial and irrelevant.

Mr. ALLEN: I will make the suggestion, if Your Honor please, that one purpose of offering that is to show that they never did business in Texas, any of them, except the Waters-Pierce Oil Company.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Judge STEDMAN: May it please Your Honor, in addition to the objections made by associate counsel to the stipulation showing the ownership of stock by the Standard Oil Company in certain corporations, I should like to offer the further objection that if the Standard Oil Company was authorized under the laws of the States creating those corporations to own stock in them, that the State of Texas can not raise the question of the illegality of the holding of the stock by the Standard Oil Company; and the further objection that when a

725 corporation comes into Texas and receives a permit to do business in the State, it comes with all of its capacities and functions as they exist in the State of its creation; and, further, that in the admission of foreign corporations into Texas no regard is paid by our laws to the incorporators of those companies nor to the manner of their constitution or organization.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

(Thereupon Stipulation No. 1, signed by counsel for both plaintiff and defendant, was introduced in evidence. It reads as follows:

"It is agreed, for the purpose of this case, only, upon the following facts, subject to all legal objections by either party:

First. That the Standard Oil Company of New Jersey is a cor-

poration organized under the laws of New Jersey; that since its organization in 1882 it has not conducted any business in the State of Texas; that it has not applied for or been granted a permit to transact any of its corporate business in the State of Texas.

Second. That said Standard Oil Company of New Jersey did own in the Waters-Pierce Oil Company, a corporation organized under the laws of the State of Missouri, in May, 1878, 2,747 shares out of a total of 4,000 shares of the said company, and that since about the 24th day of September, 1900, it has owned 2,748 shares of the capital stock out of a total of 4,000 shares of the Waters-Pierce Oil Company organized under the laws of Missouri, May 29, 1900.

Third. That the said Standard Oil Company of New Jersey owns a majority of the shares of the capital stock of the Standard Oil Company of Indiana, a corporation organized under the laws of the State of Indiana on the 11th day of June, 1889, and that said Standard Oil Company of Indiana does business in Indiana, a part of Missouri, Illinois, Iowa, Wisconsin, Michigan, Kansas, South Dakota and North Dakota, but has at no time since its organization transacted any business in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do any business in said State of Texas.

Fourth. That the said Standard Oil Company of New
726 Jersey owns a majority of the shares of the capital stock of the Standard Oil Company of New York, a corporation organized under the laws of the State of New York, on the 10th day of August, 1882; that the Standard Oil Company of New York does business in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont and New Hampshire, and it has at no time transacted any business in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do any business in the said State of Texas.

Fifth. That the said Standard Oil Company of New Jersey owns a majority of the shares of the capital stock of the Standard Oil Company of Kentucky, a corporation organized under the laws of the State of Kentucky on the 7th day of October, 1886, and that the said Standard Oil Company of Kentucky does business in the following States: Kentucky, Tennessee, Georgia, Florida, Alabama, Mississippi and part of Louisiana; that the said Standard Oil Company of Kentucky has at no time transacted any business in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do business in said State of Texas.

Sixth. That the said Standard Oil Company of New Jersey owns a majority of the shares of the capital stock of the Continental Oil Company, a corporation organized under the laws of the State of Iowa in December, 1884, and that the said Continental Oil Company has at no time transacted any business in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do any business in said State of Texas.

Seventh. That the said Standard Oil Company of New Jersey owns a majority of the shares of capital stock of the Republic Oil Company, a corporation organized under the laws of the State of New

York on the 4th day of June, 1901: and that said Republic Oil Company has at no time transacted any business in the State of Texas and has not applied for nor has it been granted a permit under
727 the laws of Texas to do any business in said State of Texas.

Eighth. That said Standard Oil Company of New Jersey has owned the said majority shares of the capital stock of the Standard Oil Company of New York, and of the Standard Oil Company of Kentucky, and of the Continental Oil Company of Iowa, and of the Standard Oil Company of Indiana, and of the Republic Oil Company of New York, since practically the dates of their respective organizations.")

Mr. ALLEN: Now, we next offer in evidence these charters of the several corporations named.

Judge PENN: If the Court please, the purported articles of incorporation of the Standard Oil Company of Kentucky, we make the objection, first, that it is immaterial and irrelevant——

The COURT: I did not understand what you said the paper was.

Judge PENN: It is what they offer as a certified copy of the charter of the Standard Oil Company of Kentucky. We make the objection, first, that it is immaterial and irrelevant. Second, there is no proof that this company was incorporated in accordance with the laws of the State of Kentucky. Third, that it appears that this company was not incorporated in accordance with the laws of the State of Kentucky. We object to the certificate attached to these copies by the Secretary of State of the State of Kentucky as to what was the law of the State of Kentucky in these respects, as being not the best evidence of what the laws of Kentucky are and as being entirely hearsay, it not being made to appear to the Court that among other duties of the Secretary of State of the State of Kentucky it was his duty to certify what the laws of that State are. We make the further objection that it does not appear that any charter was ever granted by the State of Kentucky to the Standard Oil Company therein named. We desire to add the further objection that the original charter does not appear to have ever been filed in the office of the Secretary of State of the State of Kentucky. And we add the further objection that this instrument is not authenticated
728 under the acts of Congress relating to the public acts of officers of the States, relating to the introduction in evidence of acts of public officers of one State in the courts of another State.

Mr. ALLEN: I will call your attention to one suggestion. This agreement states the date of the incorporation, and they agree that there was a corporation formed on that date, under the laws of Kentucky—agreed to as facts, that it was properly incorporated.

The COURT: The objection is overruled, except so much as relates to the certificate of the Secretary of State of the State of Kentucky, which is sustained.

Judge PENN: Defendant excepts.

(Thereupon the articles of incorporation of the Standard Oil Company of Kentucky were introduced in evidence.)

Judge PENN: If the Court please, we object to the instrument which they offer as a certified copy of the articles of association of the

Standard Oil Company of Pittsburg, on the ground, first, that it is irrelevant and immaterial to any issue in this case. Second, that this instrument does not appear to have ever been filed in the office of the Secretary of State of the State of Pennsylvania. Third, that it is not certified in accordance with the provisions of Article 906 of the statutes of the United States. To be more specific as to this objection, that it is not certified under the—has not the great seal of the State of Pennsylvania affixed to the certification nor certified by any other officer as provided by Article 906 of the statutes of the United States.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

(Thereupon the articles of incorporation of the Standard Oil Company organized under the laws of Pennsylvania on the 15th of August, 1868, were introduced in evidence.)

729 Mr. ALLEN: We offer in evidence certified copy of the articles of incorporation of the Standard Oil Company and the increase of the capital stock of the Standard Oil Company of Indiana.

Judge STEDMAN: May it please your honor, we object to the introduction in evidence of this document, for the reason that it is irrelevant and immaterial to any issue in this case. We further object that this is a charter granted by the laws of another State, and that the State of Texas can not make any inquiry into the validity of this corporation, if that is one of the purposes for which it is offered.

Mr. ALLEN: We do not offer it, of course, for the purpose of inquiring into the validity of the charter. We offer it for the purpose of showing the formation of these corporations and the carrying it out, just like provided in the original Trust Agreement, and to show stock ownership and the aggregation of the different corporations. It may be perfectly legitimate originally, but our courts have held that they can not use the corporations as a blind.

Judge STEDMAN: We further object to the introduction of this charter in evidence, for the reason that it appears from the stipulation on file in this case that the Standard Oil Company of Indiana has no permit to do business in the State of Texas and has not applied for a permit to do business in Texas.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

(Thereupon the articles of incorporation of the Standard Oil Company of Indiana were introduced in evidence.

Mr. ALLEN: Now, we offer in evidence certified copy of the articles of incorporation and the amendments thereto of the Standard Oil Company incorporated under the laws of the State of Iowa.

Judge PENN: We object, on the ground that it is immaterial and irrelevant to any issue in this case.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

730 (Thereupon the articles of incorporation of the Standard Oil Company incorporated under the laws of the State of Iowa, with amendments thereto, were introduced in evidence.)

Mr. ALLEN: We next offer in evidence original charter and the various amendments of the Standard Oil Company of New York.

Judge STEDMAN: Now, may it please Your Honor, we object to the introduction of the copy of the original charter and the copy of the certificate of extension of the corporate powers of the Standard Oil Company of New York, and to each and all of the amendments to its charter upon the ground that each and all of these documents are immaterial and irrelevant. We further object to the introduction of these documents or any of them, for the reason that, as appears from the stipulation on file, the Standard Oil Company of New York has never obtained a permit to transact any business in Texas and has never applied for a permit to transact business in Texas. And we further object to the introduction in evidence of these documents, for the reason that it appears from the certificate of the extension of corporate powers that the Standard Oil Company was incorporated and exists for purposes that would preclude its admission to do business in the State of Texas. That objection is based upon the statutory provision of Texas to the effect that a foreign corporation shall be allowed to transact business only for some single, specified purpose. The certificate of the extension of powers shows that this company is permitted to transact not merely a general oil business, but also to engage in the acquisition, holding and disposition of stocks and bonds and other evidences of debt.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

(Thereupon the articles of incorporation of the Standard Oil Company of New York, with amendments thereto, were introduced in evidence.)

Mr. ALLEN: We will offer all of these. They are the articles of incorporation of the Atlantic Refining Company and the various amendments thereto under the laws of the State of Pennsylvania.

731 Judge STEDMAN: We object to the introduction in evidence, may it please the Court, of each and all of these documents. First, because they and all of them are immaterial and irrelevant; and second, because it appears from one of the documents, dated on the 20th day of April, 1870, that the company was authorized to exercise all the privileges and franchises incident to a corporation, and that a company created by the laws of another State with such extensive powers could not under the laws of Texas be admitted into Texas to do business here; in other words, that the laws of Texas would not permit the granting of a license to a corporation created under the laws of another States for such indefinite and unlimited powers as are conferred upon this corporation by this charter.

The COURT: What is the purpose of this?

Mr. ALLEN: The purpose of it is, we have charged that the Atlantic Refining Company is one of the companies that are a part of this

trust and that it entered into this agreement and the territory was parceled out, and it is shown—we expect to show by the testimony that all of the crude oil that was purchased by the Waters-Pierce Oil Company for shipment was purchased from this company and nobody else.

Mr. LIGHTFOOT: There is no stipulation here about the division of territory as to this particular company in this agreement, but we charge in the petition that it was one of the conspirators that entered into this general conspiracy which we have alleged; that is charged in the petition, that this corporation entered into the conspiracy that was entered into by all the corporations, and also the original Trust Agreement shows on its face that this particular corporation was a party to that general trust agreement.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

(Thereupon the articles of incorporation of the Atlantic Refining Company, with the amendments thereto, were introduced in evidence.

732 Mr. ALLEN: We next offer in evidence portion of R. H. McNall's deposition, shown on page 5 of the questions and answers.

Judge PENN: We object, Your Honor, to the entire portion of the deposition of R. H. McNall which is offered, on the ground that all of the portions of the deposition which they offer are immaterial and irreleva[illegible].

Mr. ALLEN: That part that is offered is offered simply to show, and does show, where the Continental Oil Company and the Standard Oil Company of Iowa do business—what States.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

(Mr. Lightfoot read the questions and Mr. Allen the answers, as follows:

Q. What business was Mr. H. M. Tilford in?

A. Oil business.

Q. What company was he connected with?

A. Continental Oil Company.

Q. What State?

A. Well, they do business in the West. Their head office was at Denver. I can't say what State they were incorporated in.

Q. What other companies?

A. The Standard Oil Company of San Francisco; that is an Iowa corporation, I believe.

Q. Well, what other connections did he have?

A. I don't remember of any other connections.

Q. Wasn't he connected with the Waters-Pierce Oil Company at the time?

A. Not that I know of.

Q. What States did the Continental do business in during the time that you were associated with Mr. Tilford?

A. Colorado, Utah, Montana, New Mexico and Idaho.

Q. Did they do business in Arizona?

A. Yes, they did business in Arizona.

733 Q. Now, what States did the Standard Oil Company of San Francisco do business in?

A. Washington, Oregon, California, and I think also Arizona.

Q. Did they do business in Nevada?

A. Yes, I omitted that.")

Mr. ALLEN: We next offer in evidence the deposition of E. M. Wilhoit, taken on interrogatories propounded by the State.

Interrogatory 1. What is your name, where do you live, how long have you lived there, and where did you live prior to that time?

Answer. E. M. Wilhoit. 460 Monroe Street, Springfield, Missouri. Three years and a half. Joplin, Missouri.

Interrogatory 2. If you have stated that you lived at Topeka, Kansas (or if it be a fact), state what business you were engaged in there.

Answer. Yes, I lived in Topeka, Kansas, before coming to Joplin; was in the independent oil business a few months in Topeka, and was in the employ of the Standard Oil Company something like four years.

Interrogatory 3. If you have stated that you were agent for the Standard Oil Company, state what Standard Oil Company it was—that is to say, under the laws of what State was it incorporated—and state whether or not it is the same concern doing business in Missouri, and state whether or not the management is the same.

Answer. To the best of my knowledge it was the Standard Oil Company of Kentucky. It was under the same management that governed the Standard Oil Company in Missouri. It was the same concern.

Interrogatory 4. What was your business at Topeka, Kansas, for the Standard Oil Company?

Answer. I was agent and had full charge of their business at that station.

Interrogatory 5. State whether or not prior to your employ-

734 ment by the Standard Oil Company at Topeka you had any connection with any oil concern at any other point in Kansas. If so, state what concern it was.

Answer. The Standard Oil Company at Wichita, Kansas.

Interrogatory 6. If in answer to the preceding question you say that you were employed at Wichita, Kansas, by the Consolidated Tank Line Company, state what became of this company, what was done with its property, and who succeeded to its business.

Judge PENN: We object to the answer to that question, Your Honor, on the ground, first, that it is irrelevant and immaterial to any issue in this case; second, that it appears that the Consolidated Tank Line Company was a company doing business entirely in other States, and the matters as to what may have become of the Consolidated Tank Line Company can not be material to any issue in this case, and whatever may have been done with the Consolidated Tank Line Company could not constitute a violtaion of the laws of this State.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. The Standard Oil Company absorbed the Consolidated Tank Line Company. I was employed by the Consolidated Tank Line Company at the time it was absorbed by the Standard.

Interrogatory 7. If in answer to the preceding question you state that you were located at Wichita, Kansas, state what territory was included within the agency at Wichita, and state whether or not the Indian Territory was included within this territory.

Judge PENN: We object to that, Your Honor, as irrelevant and immaterial.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. I traveled out of Wichita for several years and Wichita's territory was exclusively Southwest Kansas. The Indian Ter-
735 ritory was not included in the Standard's territory.

Interrogatory 8. If you say that the Indian Territory was not included in the territory of the Consolidated Tank Line Company, state what oil company did business in that territory.

Answer. The Waters-Pierce Oil Company.

Interrogatory 9. State whether or not while you were working for the Consolidated Tank Line Company, or the Standard Oil Company, you ever filled any orders for the Waters-Pierce Oil Company, and if so, state what action, if any, was taken by you with reference to the labeling of the goods.

Judge PENN: That is interrogatory No. 9. We object to the answer to this interrogatory, on the ground that the interrogatory inquires about and the answer relates only to business done in States other than Texas, either entirely intrastate business in another State or interstate commerce, and that whatever may have been done with reference to business done entirely in another State or interstate business could not constitute a violation of the laws of the State of Texas.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. Wichita's station of the Consolidated Tank Line Company or Standard Oil Company frequently received orders mailed direct from dealers in the Indian Territory, which were filled by the Consolidated Tank Line Company, but not in the name of the Consolidated Tank Line Company. They were filled from the storage tanks of the Consolidated Tank Line Company, but a label of the Waters-Pierce Oil Company was used on the barrels in which shipment was made, as the Consolidated Company at that point was provided with Waters-Pierce Oil Company's labels. Such shipments as mentioned were charged to the Waters-Pierce Oil Company and were not billed direct to the customer.

Intrrogatory 10. State whether or not you ever had any inquiries from the Panhandle country of Texas, and if so, state whether
736 this country was included within the Waters-Pierce Oil Company's territory, or in the territory of the Consolidated Tank Line Company or the Standard Oil Company, and state what action, if any, was taken by you with reference to the trade in the Panhandle.

Judge PENN: If the Court please, we object to the answer to this

question, on the ground that it relates entirely to interstate commerce, and whatever may have been done could not constitute a violation of the laws of this State; on the further ground that the entire answer is immaterial and irrelevant. We object further to the statement, "I was instructed to make trips, which I did make, and inasmuch as the inquiries were for car-lots" and so on—statement here as to his instructions—on the ground that it is hearsay; and in the last sentence of the answer, after the comma, on the ground that it is hearsay.

Mr. ALLEN: It states that those instructions were given by the manager of the Standard.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. Yes sir, we had inquiries from the Panhandle country of Texas, which was the Waters-Pierce Oil Company's territory, and two different years on receipt of such inquiries I was instructed to make trips, which I did make, and inasmuch as the inquiries were for car-lots, and was given a schedule of prices to sell on, by the Consolidated Tank Line Company or Standard Oil Company, and was instructed by their manager, if necessary, to shade the prices liberally to secure the orders, as it was in the territory of the Waters-Pierce Oil Company, which we had no right to make shipments into, but if such shipments were secured, it would greatly increase the gallonage output of the Standard, and to wire my orders in, in order that they might be filled if possible before being detected by the Waters-Pierce Oil Company. I made trips two seasons in succession, making sales, and on asking to go third season, they stated that the Waters-Pierce Oil Company had gotten on to us and could not make further shipments to that territory.

737 Interrogatory 11. If in answer to the last question you state that you made one or more trips into the Panhandle of Texas, state at whose instance you went, and state what you did there, and state if your action was with the concurrence and consent of the Waters-Pierce Oil Company, or if it was taken with the expectation and intention that that company would not know of your sales in the Panhandle of Texas.

Answer. I believe I have answered that in the preceding paragraph.

Interrogatory 12. Have you any knowledge of the dividing line between the territory assigned to the Standard Oil Company and the Waters-Pierce Oil Company? If so, state where it is, and state how you acquired your knowledge.

Judge PENN: We object to that, Your Honor, as being irrelevant and immaterial, and as relating entirely to business outside of the State of Texas and interstate commerce; and we object further specially to the statement contained in this answer, "I was instructed to not make any sales in the Indian Territory or Texas, as that was the territory of the Waters-Pierce Oil Company," as being hearsay.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. I have no knowledge of a dividing line except as I came in contact with it through instructions from the Standard and since being in the independent business, observing that the Standard sold goods in a certain territory and such territory was not invaded by the Waters-Pierce and the Waters-Pierce's territory was not invaded by the Standard; and while with the Standard and Consolidated Tank Line Company, I was instructed to not make any sales in the Indian Territory or Texas, as that was the territory of the Waters-Pierce Oil Company, and the only sales I was permitted to make in such territory were those I have previously outlined. The territory or boundary line, such as we have observed, the State line of Texas,
North line of Indian Territory, the East line of the extreme
738 Southern part of Kansas running North to between Lamar and Jasper, Missouri, thence Northeasterly across the State of Missouri, being the dividing line between the Waters-Pierce and Standard Oil Company's territories, the Waters-Pierce Oil Company operating South of this line and the Standard Oil Company North.

Interrogatory 13. In what parts of Missouri and Kansas have you sold oil? At what points have you been in competition with the Waters-Pierce Oil Company and at what points have you been in competition with the Standard Oil Company? State whether or not you have ever at any point been in competition with both companies.

Judge PENN: We make the same objections, Your Honor—that it is immaterial and irrelevant and relates to business transacted outside the State of Texas.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. I have sold oil at Topeka, Kansas, as business headquarters; now have distributing points at Springfield and Joplin, Missouri. At Topeka, Kansas, the Waters-Pierce to my knowledge never made a sale. At Joplin and Springfield, Missouri, I have never known the Standard to make a sale. Joplin, Missouri, being but eight miles from Galena, I have never known the Standard to make a sale at Joplin; while at Galena, eight miles distant and just across the Kansas line, I have never come in contact with where the Waters-Pierce have made a sale. At Carthage, Missouri, and Jasper, Missouri, the Waters-Pierce sells no doubt ninety per cent. of the oil that is consumed; and at Lamar, Missouri, a few miles distant North, the Standard sells all the oil that is sold. I have never known them to market oil both in the same territory or come in competition with each other except in the Panhandle of Texas, as previously outlined.

Mr. ALLEN: We next offer in evidence the deposition of CHARLES F. HATFIELD.

739 Interrogatory 1. What is your name, residence and business?

Answer. Charles F. Hatfield; residence 216 Delmar; Secretary Eidson Publishing Company.

Interrogatory 2. State whether or not you have ever had any position with the Waters-Pierce Oil Company, and if so, state for what period and the character of your employment.

Answer. Yes. 1889, October 1st, to November 1st, 1904; the first six months at Marshall, Texas, as assistant manager, title of chief clerk, this being the division headquarters of the East Texas and Louisiana division of the Waters-Pierce Oil Company; after that until November of 1904 in the general offices at St. Louis, part of the time as assistant to the vice president, and afterwards in charge of the freight and claim department, and other statistical work, also embracing special work for various offices like the collecting of large railroad accounts and sales made to railroads.

Interrogatory 3. Before you became employed by the Waters-Pierce Oil Company state what your business was. State where you were employed.

Answer. Private Secretary to Col. W. P. Thompson. New York and Cleveland.

Interrogatory 4. If you have said, or if it be a fact, that you were employed at 26 Broadway, New York City, by what name the building was generally known?

Answer. Standard Oil Block.

Interrogatory 5. If you have said that you were employed as the private secretary of Col. Thompson, state who Col. Thompson was. State what his business was when you first knew him, and state what connection, if any, he had with the Standard Oil Company.

Judge PENN: We object to that as being irrelevant and immaterial to any issue in the case.

The COURT: The objection is overruled.

740 Judge PENN: Defendant excepts.

Answer. Principally Chairman of the committee known as the Domestic Trade Committee. He was also in general charge of the traffic arrangements of the Standard Oil Company, a director in a large number of other companies, oil, banks, trusts, like the Mercantile Trust, railroads, and generally a very busy man. When I first knew him he was secretary of the Standard Oil Company at Cleveland; afterwards vice president of that company until he removed to New York to take charge of the D. T. Committee, as above.

Interrogatory 6. Did you know H. E. Felton? If so, state by whom and where he was employed.

Answer. Yes. I first knew him in the Cleveland office and afterwards in New York, in the employ of the Standard Oil Company.

Interrogatory 7. If you say that he was employed by the Standard Oil Company, or was employed at 26 Broadway, state what department he was in.

Answer. I think it was in the traffic, or the Union Tank Line—I have really forgotten exactly which.

Interrogatory 8. State whether or not you ever had any occasion to know anything about the trade territory of the Waters-Pierce Oil Company, and if so, state how you know, and state what the territory was.

Answer. I had a general knowledge through the correspondence that the Waters-Pierce Oil Company territory was West of the Mississippi River, taking in half of Missouri and including Oklahoma

and Indian Territory, Arkansas, Texas, Louisiana, down to about Morgan City, and Old Mexico.

Interrogatory 9. If in answer to the preceding question you say that you first became familiar with the matter by reason of handling the correspondence of Col. Thompson in settling a controversy concerning this territory, state between what companies the controversy was, and state all the circumstances connected with Col.
741 Thompson's disposition of this controversy.

Judge PENN: If the Court please, we object to the answer to this interrogatory No. 9 as being irrelevant and immaterial; and on the further ground that the matters therein testified to appear to relate to matters entirely outside of the State of Texas, namely, in the State of Missouri; and on the further ground that it does not appear from the answers of the witness when the transactions testified to by him in this answer occurred.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. Between the Waters-Pierce Oil Company and the Consolidated Tank Line Company, operating in the West and, I think, taking in the Northern part of Missouri, Iowa, Kansas, and West; the dispute was over some county in Missouri, and the matter of adjustment was referred to Colonel Thompson by both above companies, he being the Eastern director of both of these companies, to which all general correspondence of such character was referred. The adjustment was made by the Colonel's having a map made showing the dividing lines in Missouri, a copy of which was sent to both companies and one kept in the New York office. My answer covers the facts, there is lots of detail to it, but I don't remember all this.

Interrogatory 10. State whether or not you ever had any other occasion to become informed of the division of the territory for trade purposes between the Waters-Pierce Oil Company and the Standard Oil Company and its dependent companies, and if so, state what the occasion was, and state how you ascertained the facts connected with the matter, and state the territory conceded by the Standard Oil Company to the Waters-Pierce Oil Company.

Answer. Only in general correspondence, running over eight or nine years, and so many times that I could not remember the circumstances.

Interrogatory 11. Have you any knowledge of the scheme
742 or plan by which the Waters-Pierce Oil Company became familiar with the operation of its competitions? If so, state how you became familiar therewith, and state minutely and in detail the plan pursued.

Judge PENN: If the Court please, we object to the answer to that interrogatory on the ground that it is irrelevant and immaterial to any issue in this case; and that the plans or schemes of the Waters-Pierce Oil Company for obtaining information with reference to the operations of their competitors could not constitute any violation of the anti-trust laws or any other laws of this State.

The COURT: The objection is overruled.

Judge STEDMAN: Please note our exception, Your Honor.

Answer. That's a broad question, that I could not answer fully. I can merely say that through the agents of their own and friendly companies they had a general knowledge of the movements of competitive —. The data was systematically compiled and submitted to the proper officials, but the use made by them of this could only be surmised by me. My connection was simply in compiling statistics that were furnished me, working under the instructions of the president and vice president of the Waters-Pierce Oil Company.

(Interrogatories Nos. 12 and 13 omitted.)

Interrogatory 14. From whom did you receive instructions or directions in discharging the duties assigned to you by the Waters-Pierce Oil Company?

Answer. At different times I received instructions from every officer of the company from the president down to the general manager, as I was general utility man on account of my acquaintance with the railroad people.

Mr. ALLEN: The fifteenth says he didn't have any direct knowledge; we don't offer that.

(Interrogatories Nos. 16 and 17 omitted.)

743 Interrogatory 18. If in answer to any question you have stated that you are familiar with the trade territory occupied by the Waters-Pierce Oil Company, then state whether or not you had occasion while employed in Col. Thompson's office to make any character of writing defining such territory; if so, state what it was and the circumstances under which it was made.

Answer. Too long ago for me to remember details, but in the general correspondence lasting for many years it was generally conceded that the territory as I have stated above was a matter about which there was no discussion to my knowledge, except in the special incident mentioned above where the Missouri line was not thoroughly defined. While I was in Texas there was a dispute with the Standard Oil people at New Orleans as to the exact dividing line in Southeast Louisiana, which was adjusted while I was there.

Interrogatory 19. When you left 26 Broadway, New York, where did you go, and in what companies' employ did you enter?

Answer. I'll answer it in my own way. Col. Thompson was elected president of the National Lead trust, I think, in May, 1889, and from that time until the latter part of August of that year my time was divided between #26 Broadway and the office of the National Lead trust. I resigned my position with the Colonel to accept the position that had been tendered to me some months previously by Mr. Pierce, in connection with the Waters-Pierce Oil Company. That explains it.

Interrogatory 20. If in answer to the foregoing interrogatory you have stated, or if it be a fact, that you went to St. Louis and entered the employ of the Waters-Pierce Oil Company, then state whether or not you saw in the office of the Waters-Pierce Oil Company any writings, maps or other documents which had been prepared at 26 Broadway; if so, state what they were and what they referred to.

Judge PENN: Just a moment, Mr. Allen.

Mr. ALLEN: We don't offer any part of it, except that
744 about the map.

Judge PENN: Well, go ahead.

Answer. The map referred to above. I didn't quite understand the question, but the map referred to is the only document that I remember that referred to the territorial lines of the company.

Interrogatory 21. How long did you work for the Waters-Pierce Oil Company, and when did you sever your connection with them?

Answer. It is answered above, but I'll repeat it: from October 1st, 1889, to November 1st, 1904. I want to add to that, and I desire to state in this connection that I resigned my position to go into business for myself, with a letter of regrets from the president. I want to make this record so that there will be no opportunity for assuming that I am in any way unfriendly to the Waters-Pierce Oil Company or its officials, and, in fact, I am an unwilling witness in this case.

Interrogatory 22. Give in detail your knowledge of the plans of organization of the business at 26 Broadway, stating what companies were represented at that place, and who represented them at the time you were employed there, and state whether or not the Waters-Pierce Oil Company was represented by any officer or agent in that organization.

Judge PENN: We object to the answer of this witness, Your Honor, in so far as he undertakes to detail the plan of organization at 26 Broadway, on the ground that it appears to be but a conclusion of the witness from which he has no personal knowledge. We make the further objection that the entire answer is immaterial and irrelevant, and the further objection that it appears from the previous answers of the witness that he left the employ at 26 Broadway October 1, 1889, prior to the organization of this defendant.

Judge STEDMAN: And prior to the enactment of the law.

Judge PENN: Yes, sir, and prior to the enactment of the law under which this defendant is being prosecuted.

The COURT: What is the number of the interrogatory?

Mr. LIGHTFOOT: It is the last one—No. 22.

745 Judge PENN: And we make the further objection that there is nothing detailed here that could have been an offense under the laws of this State.

The COURT: The objection is overruled, except as to that clause marked in parenthesis.

Judge PENN: If the Court please, we could hardly without complicating matters make specific objection to a sentence here without the other. We desire to object to the second sentence in the answer because it appears that it is hearsay, in addition to the other objections.

Mr. ALLEN: We submit that that is not hearsay, because he starts out with the proposition that what he states is from his own personal knowledge in a general way, and that he is familiar with the plan of work and things in a general way what it was, and must be taken in connection with the other testimony, and detailed fully his means of knowledge, in other words, in previous answers.

The COURT: The objection is sustained.

Judge PENN: We except to the ruling of the Court as to the first objections made.

Answer. Only in a general way can I answer this question from personal knowledge, as it has been conceded that the organization of the Standard Oil Company and its interests is one of the greatest from a business standpoint in this or any other country. These companies were represented by various officials connected with several committees, such as the domestic trade committee, the manufacturing committee, lubricating oil committee, cooperage committee, and many others, all of which were the same as various departments are handled in a large business house, only instead of one officer looking after the sales, another after the supplies, another after the manufacturing, committees did this work,—all of the committees reporting, of course, to the executive committee, of which it was under-
746 stood Mr. John D. Rockefeller was Chairman. For instance, if the domestic trade committee and the manufacturing committee disagreed on any point and could not adjust this disagreement, it would be referred to the executive committee, whose decision was final. So that there might be a clearing house to adjust differences between various subsidiary companies and the different territories, there was one man representing one or more of these, as a member of the domestic trade committee, of which Col. Thompson was Chairman. He also represented the Consolidated Tank Line Company, the Waters-Pierce Oil Company, the Camden Oil Company, I think it was, at Parkersburg, and, I believe, the Baltimore United Oil Company. Mr. H. A. Hutchins represented, for instance, the Standard Oil Company of Chicago, Cleveland, and some others which I don't recall. I think Mr. H. M. Tilford largely represented the Western companies, like the Continental, with headquarters at Denver, and the San Francisco interests. After I left # 26 Broadway, I think it was, the Standard Oil Trust was dissolved, and I have no personal knowledge of the manner in which the business was handled, but what companies, or what representatives, I could not state. During the entire time that I was connected with the Standard Oil Company at Cleveland and New York, the Waters-Pierce Oil Company was represented by Colonel W. P. Thompson—at least, all the correspondence was addressed to him that came into his department or his committee. I do not know that they would place their orders for supplies with him, as there was a General Distribution Department; orders, at that time, being received in this Department from all subsidiary companies, and shipments made from whatever refinery had the stock and was nearest to the point of destination. Remember, that it has been many years since I was at # 26 Broadway.

Mr. ALLEN: We next offer in evidence the judgment rendered in the case of the State of Texas against the Waters-Pierce Oil
747 Company on the 15th day of June, 1897.

Judge PENN: We object to that judgment as irrelevant and immaterial to any issue in this case, as being a judgment in a suit to which this defendant was not a party.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon the judgment rendered in cause No. 12,589, the State of Texas *vs.* Waters-Pierce Oil Company, dated June 15, 1897, was introduced in evidence.)

Mr. ALLEN: We offer in evidence certified copy of an affidavit purporting to show the dissolution of the Waters-Pierce Oil Company incorporated under the laws of Missouri, on the 7th day of May, 1878.

Judge PENN: We object to that as irrelevant and immaterial, relating to the dissolution of the prior corporation.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon the certified copy of affidavit of dissolution of the Waters-Pierce Oil Company was introduced in evidence.)

Mr. ALLEN: Then we offer in evidence next the charter of the Waters-Pierce Oil Company, to which you say you have no objection. It is the present company. It was executed on the 28th day of May, 1900; filed in the office of the Secretary of State of the State of Missouri on May 29th, 1900; and filed in the office of the Secretary of State of the State of Texas on the 31st day of May, 1900.

(Thereupon the charter of the present Waters-Pierce Oil Company was introduced in evidence.)

Mr. ALLEN: Then we offer in evidence a certified copy of
748 the permit of the present Waters-Pierce Oil Company.

Judge PENN: There is no objection to it.

(Thereupon the certified copy of the permit of the present Waters-Pierce Oil Company was introduced in evidence.)

Mr. ALLEN: We next offer in evidence the mandate from the Supreme Court of the United States in the case of The State of Texas against the Waters-Pierce Oil Company,—certified copy of it.

Judge PENN: We make the same objection to this instrument that we did to the copy of the original judgment introduced in the District Court of Travis County, and which was introduced in evidence,—that it is immaterial and irrelevant to any issue in this case, and is the final judgment in a suit to which this defendant was not a party.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon the Mandate of the Supreme Court of the United States in the case of The State of Texas *vs.* Waters-Pierce Oil Company was introduced in evidence.)

Thereupon the Court adjourned until 9.30 A. M. May 23, 1907.

THURSDAY, MAY 23, 1907.

The COURT: We will proceed, Gentlemen.

Mr. ALLEN: Now, we next offer in evidence portion of the deposition of H. Clay Pierce taken in the case of the State of Missouri against the Standard Oil Company of Indiana, the Waters-Pierce Oil Company and the Republic Oil Company, which is offered by agreement that it may be used the same as if taken in this case.

Mr. LIGHTFOOT (to the Stenographer): We want you to take this down.

Mr. ALLEN (reading): Be it remembered, that on Mon-
749 day, the 19th day of March, 1906, at the Southern Hotel in the City of St. Louis, Missouri, this cause coming on for further hearing before Hon. Robert A. Anthony, Commissioner appointed and qualified by the Supreme Court of Missouri to hear the same, the following among other proceedings were had and entered of record, to-wit:

HENRY CLAY PIERCE, being produced, and duly sworn by the Commissioner, on his oath testified for the respondent, Waters-Pierce Oil Company, as follows:

Direct examination by Mr. JOHN D. JOHNSON:

Q. State your name, please.
A. Henry Clay Pierce.
Q. Your residence?
A. St. Louis.
Q. You spend most of your time in New York City, don't you?
A. All of it.
Q. What is your connection at the present time with the Waters-Pierce Oil Company?
A. Chairman of the Board of Directors.

Mr. ALLEN (reading): The further hearing of this cause was adjourned until Tuesday, March 29, 1906, and from time to time from that date until the 10th day of September, 1906, when the hearing of this cause was resumed at the Southern Hotel in the City of St. Louis, Missouri, and the following further proceedings among others were had and entered of record, to wit:—

Mr. ALLEN: Judge Stedman, I suggest that if you have a copy of this testimony in this form it would be very much better, because I am going to jump by pages here, and I don't know how you can keep up with it in any other way.

Judge STEDMAN: I have it only in printed form.

Mr. ALLEN: We have it marked simply with reference to this paging.

Judge STEDMAN: Well, we will do the best we can.

750 Mr. ALLEN: Well, the first question, then, is on page 2. It's about the third or fourth question, Judge.

Judge STEDMAN: All right.

(Mr. Lightfoot read the questions and Mr. Allen the answers.)

Q. Mr. Pierce, you may state your name, age, and place of residence.
A. Henry Clay Pierce; St. Louis; fifty-seven.
Q. Are you a stockholder in the Waters-Pierce Oil Company?
A. I am.
Q. It is a company organized under the laws of the State of Missouri, is it?
A. It is.

Mr. ALLEN: Now, about three pages of this is skipped.

Mr. LIGHTFOOT: On page 3.

Mr. ALLEN: Page 3 or 4—it's page 4.

Mr. LIGHTFOOT: There is one question on page 3, Mr. Allen.

Q. Does the Standard Oil Company of New Jersey own any stock in the Waters-Pierce Oil Company.

Mr. LIGHTFOOT: Now, the answer is on the next page.

A. I understand that certain shares of stock in the Waters-Pierce Oil Company standing on its books in the name of M. M. Van Beuren has been admitted in this case to be the property of the Standard Oil Company of New Jersey.

Q. Can you state the number of those shares?

A. I believe the number is 2746.

Q. Substantially that?

A. Substantially. I am not sure as to the exact number.

Q. What number of shares do you own?

A. 1250.

Q. Now, Mr. Pierce, will you please explain the relations between the Waters-Pierce Oil Company and the Standard Oil Company of New Jersey, and, in order that you may be brief, if you have prepared a memoranda shortly detailing that, I will say that
751 you may refer to that memoranda and read it.

A. I have a memoranda answering that question, which I will read. During the Fall and Winter of 1877 and 1878 I organized under the laws of the State of Missouri the first Waters-Pierce Oil Company, which succeeded to the business of Waters, Pierce & Company. The original capital was one hundred thousand dollars, of which amount Waters, Pierce & Company subscribed for forty per cent., Horace A. Hutchins and William P. Thompson of Cleveland, Ohio, subscribed for forty per cent., and Chess, Carley & Company of Louisville, Kentucky, subscribed for twenty per cent. The first officers of the first Waters-Pierce Oil Company were: William H. Waters, director and President; H. Clay Pierce, Director and Vice-President; Charles M. Adams, Secretary and Treasurer; Horace A. Hutchins, Director; William P. Thompson, Director, and Francis D. Carley, Director. Some time after the organization of the first Waters-Pierce Oil Company the forty per cent. belonging to Hutchins and Thompson, and the twenty per cent. belonging to Chess, Carley & Company, was transferred to the Trustees of the Standard Oil Trust, and I purchased the interest of William H. Waters in the forty per cent. belonging to Waters, Pierce & Company. So that, when, on May 29th, 1900, the first Waters-Pierce Oil Company was liquidated, the assets were distributed in these proportions.

Mr. ALLEN: Now, then, it skips a page, Judge.

A. It simply refreshes my memory. When the license of the first Waters-Pierce Oil Company to do business in Texas was revoked, and I sought to settle with the State, so that we could continue our business there, I was told very frankly by a prominent citizen of Texas that the people of that State would not tolerate the methods of the Standard Oil Company, and that no corporation controlled by that company would be permitted to carry on business in Texas. I explained this situation fully to the Executive Committee of the

Standard Oil Company, and they agreed that I should organ-
752 ize a new company, the stock of which I should hold, and that I should manage and control the company absolutely free from any dictation or direction of the Standard Oil Company.

Mr. ALLEN: It skips down then to the next answer.

A. Up to the Spring of 1904 the Standard Oil Company made no attempt to interfere in any way with my management.

"Mr. HADLEY: Up to when?"

A. Up to the Spring of 1904, the Standard Oil Company made no attempt to interfere in any way with my management and control of the Waters-Pierce Oil Company, but at that time they transferred the stock which had stood in my name to Mr. M. M. Van Beuren, and began in other ways to assume a control over the affairs and operations of the company. I protested against this conduct as a violation of their agreement with me, and as contrary to the representations which I had made to the people of Texas.

Q. A great deal, Mr. Pierce, has been said in this case about the division of territory between the Standard Oil Company of Indiana and the Waters-Pierce Oil Company. State as briefly as you can when the territorial operations of the Waters-Pierce Oil Company began and to what territory it extended.

A. When, in 1878, I organized the first Waters-Pierce Oil Company, its predecessors, Waters, Pierce & Company and H. C. Pierce & Company, had already established business in all of the territory in which the present Waters-Pierce Oil Company now operates, and it was agreed and understood between myself and the representatives of the Standard Oil Company of Ohio, I think, at least it was the only Standard Oil Company that I knew of as being in existence at that time, that the first Waters-Pierce Oil Company would confine its operations and transact its business within the certain territory which Waters, Pierce & Company and H. C. Pierce & Company had transacted their business. In other words, the Waters-
753 Pierce Oil Company organized in 1878 was to take over the business of Waters, Pierce & Company. In pursuance of this understanding, certain lines were agreed upon in the State of Illinois, which comprised parts of, I think, Madison and St. Clair Counties, including East St. Louis——

Q. Wait a minute, Mr. Pierce. Have you that map, Mr. Hadley?

"Mr. HADLEY: Yes sir. (Handing Mr. Priest map, Exhibit "A.")"

("Witness here examines map marked Exhibit "A.")

"Mr. HADLEY: The red line with the black marks across it is the line drawn by Judge Johnson, as I understand it."

Q. Mr. Pierce, describe generally, without being particular, the divisional line of territory agreed upon at that time.

A. This map, as presented to me, is not correct. I am sufficiently familiar with it to state that. The original map is in my possession, or was, and I suppose search will disclose it. I will be very glad to produce it.

"Mr. HADLEY: It was in response to the original notice that one was offered here, from which this was determined."

A. That was without my knowledge. I will be glad to produce it if it can be found. It only came to my knowledge a half hour ago that this map was presented here. It was probably caused by the business falling into the hands of people who were not familiar with the original agreement. I doubt if any of the company's officers have seen the map within the last twenty years.

"The COMMISSIONER: I would suggest that if Mr. Pierce from his memory can give his recollection of the lines that he do so."

A. Mr. Commissioner, I will give it generally——(Judge Stedman interrupts.)

Judge STEDMAN: Your Honor, we object to that testimony, indicating certain territory, for the reason that it is immaterial and irrelevant; and, further, because it relates to transactions
754 with the Waters Pierce Oil Company which has ceased to exist, and which is not a party to this suit.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts to the ruling of the Court.

(Mr. Allen read portion of the answer, as follows:)

A. The line within the State of Missouri commenced at a point just South of Hannibal, on the West bank of the Mississippi River, and ran according to county lines South-west to the Western border of Missouri, bordering upon Kansas a short distance South of Fort Scott.

Q. Continue with respect to the other territory, Mr. Pierce. That included the parts in Illinois that you have described, and the parts in Missouri you have described, and what other territory?

A. The State of Arkansas; what is now the Indian Territory and Oklahoma; the State of Texas; all of the State of Louisiana West of the Mississippi River, and the Republic of Mexico.

Q. Has there been any change in that territory since it was then established?

A. There has not.

Q. Pursuant to that division of territory the Waters-Pierce Oil Company confined its operations to building up the trade within that territory?

A. It did.

Q. When the Waters-Pierce Oil Company, the old company, was organized in 1878, it succeeded the partnership of Waters, Pierce & Company?

A. It did.

Q. And Waters, Pierce & Company had succeeded the firm of——

A. H. Clay Pierce & Company.

Q. From what source did the Waters-Pierce Oil Company obtain its supplies of refined oils at that time?

Judge STEDMAN: We object to that as immaterial and irrelevant, and further, because it relates to transactions with the Waters-
755 Pierce Company of 1878, which has been dissolved and is not a party to this suit.

The COURT: The objection is overruled.
Judge STEDMAN: We except.

A. Almost exclusively from the Standard Oil Company.
Q. And from what sources has it since that time obtained its supplies of refined oils?
A. Almost exclusively from the Standard Oil Company and its allied interests.
Q. Did the old Waters-Pierce Oil Company or the present Waters-Pierce Oil Company refine any oil or manufacture any of the products of petroleum in the United States?
A. It did not manufacture refined oils. It did manufacture lubricating oils and greases.
Q. All of these other oils were obtained from the Standard Oil Company and its allied interests, Standard Oil Company of New Jersey?
A. All of the refined oils, naphthas, gasolines and most of the lubricating oils were obtained from the Standard Oil Company and its allied interests.
Q. In other words, the Waters-Pierce Oil Company was engaged exclusively as a merchant of manufactured products in the United States?
A. Within the United States, almost exclusively so.
Q. Did the Waters-Pierce Oil Company establish any refinery in the Republic of Mexico?
A. It did, several.
Q. From what source did it get the crude petroleum to refine in the Republic of Mexico?

Mr. ODELL: We object, if the Court please, to any testimony concerning business done by this company in the Republic of Mexico, for the reason that it is immaterial and irrelevant, and any business done in a foreign country in the refining of oil by this com-
756 pany can have no possible applicability to this case or throw any light on the issues in the case.
Judge STEDMAN: And for the further reason, Your Honor, that this testimony relates to transactions with the old original Waters-Pierce Oil Company of 1878, now dissolved, and not a party to this suit.
The COURT: The objection is overruled.
Mr. ODELL: We except.

A. Because crude petroleum was not produced within the Republic of Mexico, the Waters-Pierce Oil Company obtained all of its crude petroleum for manufacturing in Mexico from the Standard Oil Company.
Q. How was the crude petroleum taken to Mexico for refining?
A. In bulk steamer belonging to the Waters-Pierce Oil Company, built by and belonging to the Waters-Pierce Oil Company.
Q. And all of the supplies of the Waters-Pierce Oil Company sold in the Republic of Mexico was refined by it in the Republic of Mexico?
A. All, of all kinds.

Q. The present Waters-Pierce Oil Company in 1900 succeeded to an established business of the old Waters-Pierce Oil Company and since that time it has confined itself exclusively to building up the business within the territory formerly occupied by the old Waters-Pierce Oil Company, is that true?

A. That is correctly stated.

Q. Will you tell me approximately the amount of sales in gallonage of the Waters-Pierce Oil Company in the United States territory?

A. I have not a division of the business between the United States and the Republic of Mexico, but I can state the gross sales of both.

Q. What are they, Mr. Pierce?

A. I have not refreshed my memory recently, but I recall that in the year 1902 the gross sales amounted to 2,677,362 barrels.

Q. How many gallons to the barrel?

A. Fifty.

757 Mr. LIGHTFOOT: Now, we skip about a page.

Mr. ALLEN: Skip a page to the continuation of the Direct Examination by Mr. Priest.

Q. Mr. Pierce, personally you have been engaged in the oil business in the territory in which the Waters-Pierce Oil Company is operating, either in its name or in the name of preceding firms you have mentioned, for how many years?

A. Thirty-seven.

Mr. LIGHTFOOT: Then we skip about half a page.

Q. Who were the first board of directors of the Waters-Pierce Oil Company organized in 1878, do you recall?

A. William H. Waters, H. C. Pierce, William P. Thompson, Horace A. Hutchins, Francis D. Carley.

Q. How long did those gentlemen continue as directors of the Waters-Pierce Oil Company, if you recall?

A. W. H. Waters until I purchased his interest.

Q. To shorten that answer and abbreviate the testimony, I will ask you if the first directors you named did not continue to act as such until 1885? (Handing witness a paper.)

A. All of the first directors continued from their election in the year 1878 until the annual meeting of the company in the year 1885.

Q. Where did Francis D. Carley live?

A. Louisville, Kentucky.

Q. Where did H. A. Hutchins live?

A. Cleveland, Ohio.

Q. Where did W. H. Waters live?

A. St. Louis, Missouri.

Q. Where did W. P. Thompson live?

A. Parkersburg, West Virginia, and Cleveland, Ohio.

Q. And you resided in St. Louis?

A. St. Louis, Missouri.

758 Q. Did Mr. W. H. Waters take any active part in the management of the company?

A. He did not.

Q. During the period he was a director. So that you were the only person present of the directors during that year in charge of the property?

A. During what year, Judge?

Q. During those years, 1878, 1879, 1880, 1881, 1882, 1883, 1884 and 1885.

A. Mr. Waters made his office headquarters in the office of the Waters-Pierce Oil Company, but he did not take any active part in the management of the business.

Q. In 1885 the directory continued as it was before except that W. H Tilford was elected instead of Francis D. Carley, did it not?

A. At the annual election in the year 1885 W. H. Tilford of New York succeeded F. D. Carley of Louisville.

Q. In 1887 Mr. Cowles took the place of H. A. Hutchins in the directory, did he?

A. Yes, sir, he did.

Q. Where did Mr. Cowles live?

A. Either in Cleveland, Ohio, or New York, I don't remember which.

Q. The same directory continued in 1888 except that H. M. Tilford was substituted for W. H. Tilford?

A. That is correct.

Q. Where did H. M. Tilford live?

A. New York City.

Q. Is he a brother of W. H. Tilford?

A. He is.

Q. The following year Mr. Silas H. Paine took the place of H. M. Tilford, did he not?

A. He did.

759 Q. Where did Silas H. Paine live?

A. New York City.

Q. In 1889 the directory continued substantially as it was in 1888?

A. I believe so.

Q. Now, in 1890 Mr. A. M. Finlay was elected instead of W. H. Waters, was he not?

A. That was in the year 1890?

Q. Eighteen hundred and ninety?

A. In that year I purchased the interest of W. H. Waters in the Waters-Pierce Oil Company; succeeded him as President; brought Mr. Finlay, who had been manager of a Texas division during a number of years, to St. Louis, and made him Vice-President and Director of the company.

Q. And Mr. G. F. Gregory succeeded Mr. W. H. Tilford in the directory?

A. That is correct.

Q. Otherwise the directory continued as the year previous?

A. That is true. Mr. Gregory lived in New York.

Q. In 1891 the directory consisted of yourself, Mr. Finlay, Mr. H. M. Tilford, Mr. Silas H. Paine and Mr. C. M. Pratt?

A. It did.

Q. Did any of those directors except yourself and Mr. Finlay reside in St. Louis?

A. They did not.

Q. Or take any part in the active management of the property?

A. Others than Mr. Finlay and myself did not take any active part in the management of the company.

Q. In 1892 the directory consisted of yourself, Mr. Finlay, Mr. H. M. Tilford, Mr. C. M. Adams and Mr. J. P. Gruet, is that correct?

A. That is correct.

Q. And Mr. Adams and Mr. Gruet both resided in St. Louis?

A. Mr. Adams and Mr. Gruet both resided in St. Louis.

760 Mr. Adams had been with the company as its secretary from the date of its organization—as its treasurer and secretary—and later as treasurer, and Mr. Gruet had been with the company some years as auditor and later as secretary.

Q. And the directory as constituted in that year continued until the year 1900?

A. That directory continued until the dissolution of the first Waters-Pierce Oil Company in the year 1900.

Q. Now, in the new Waters-Pierce Oil Company, organized in 1900, who were that directors?

A. H. C. Pierce, Andrew M. Finlay, C. M. Adams, J. P. Gruet, John D. Johnson.

Q. And Mr. H. M. Tilford in 1900?

A. I have answered it correctly.

Q. This memoranda is wrong, then?

A. The memoranda relates to the old company prior to May 29th, 1900, when the old company was dissolved.

Q. And the directory as thus constituted continued until 1904, the Spring of 1904?

A. It did.

Q. In 1904 Mr. W. F. Taylor took the place of Mr. J. D. Johnson and Mr. R. P. Tinsley took the place of Mr. J. P. Gruet?

A. They did.

Mr. LIGHTFOOT: Now, we skip about a page.

Q. Can you give me approximately the quantity of oils of different kinds, or the products of petroleum, that the Waters-Pierce Oil Company since 1900 has purchased from the Standard Oil Company of New Jersey and its allied companies—the Standard Oil Company of New Jersey and Standard Oil Company of Indiana, I mean?

A. Do you intend to say annually or in the aggregate?

Q. You can put it annually. I do not want you to be precise and definite, of course you could not be, but approximately?

761 A. I have not recently examined the books, but, as I testified this morning, the Waters-Pierce Oil Company sold during the year 1902, which was the last date I recall, about two million six hundred and seventy-seven thousand barrels of all kinds of oils and petroleum products in this country and in Mexico, and with the exception of fuel oil, which was purchased both from the Stand-

ard Oil Company and from producers generally in the Texas field, practically all of the crude oil which entered into the manufacture of the refined products in the Republic of Mexico and all of the refined oils and lubricating oils sold by the Waters-Pierce Oil Company within the United States were purchased from the Standard Oil Company.

Q. You mean the Standard Oil Company and the Standard Oil Company of Indiana?

A. The Standard Oil Company of Indiana and its allied interests.

Mr. ALLEN: Skip about three pages.

Q. Now, Mr. Pierce, did you make any effort at any time to extend the business of the Waters-Pierce Oil Company outside of the territory which you defined this morning?

A. Since the organization of the first Waters-Pierce Oil Company in the year 1878, neither myself or any one connected with the Waters-Pierce Oil Company, so far as I know, and certainly never with my authority, ever made any attempt to sell oil, to locate stations or in any manner transact business outside of the territory in which the present Waters-Pierce Oil Company now operates.

Mr. LIGHTFOOT: Skip four or five pages there.

Mr. ALLEN: It skips about four to five pages, then I take up the answer which begins, "In the United States the Waters-Pierce Oil Company has occupied"—it's a long answer. The answer explains itself.

A. In the United States the Waters-Pierce Oil Company has occupied the position of merchandising petroleum and its pro-
762 ducts. In the Republic of Mexico the Waters-Pierce Oil Company first occupied a similar position, but when the consumption of petroleum products in Mexico justified it established there four refineries, located at the principal cities, and purchased crude petroleum on the Atlantic Seaboard from the Standard Oil Company, or its allied interests, and transported the crude petroleum in the Waters-Pierce Oil Company's own steamers to Vera Cruz and Tampico, in Mexico, to supply its refineries there, and at points in the interior of Mexico and in Mexico the Waters-Pierce Oil Company has, since the establishment of those refineries, manufactured all of the products of petroleum of all kinds sufficient to supply all of the requirements for such products within the Republic of Mexico, and is doing so at this time.

Q. Now, Mr. Pierce, the Waters-Pierce Oil Company, the firms which preceded the Waters-Pierce Oil Company, and the old Waters-Pierce Oil Company, organized in 1878, undertook to merchandise within the territory then allotted to it the products of the Standard Oil Company, and it has continued to occupy relatively that position ever since, is that true?

Judge STEDMAN: We object to that as immaterial and irrelevant; and, further, upon the ground that the transactions with companies or corporations prior to the organization of the present Waters-Pierce Oil Company can not be visited upon this defendant; and,

further, that those companies and corporations are not parties to this suit.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

A. The firms which preceded the first Waters-Pierce Oil Company purchased crude oil, crude petroleum, from parties other than the Standard Oil Company, because in the beginning the Standard Oil Company did not have an existence, and refined and manufactured such crude oils into refined oils at their refineries located in St. Louis on the ground between Thirteenth and Fourteenth and
763 Austin and Gratiot streets, and sold that oil wherever it could. When the firm of W. H. Cobb & Company was organized in 1869 and succeeded to the firm of John R. Finlay & Company it for a time continued the same method of transacting its business, but when the Standard Oil Company came into existence the firm of W. H. Cobb & Company commenced purchasing crude petroleum and its refined products from the Standard Oil Company, and also continued purchasing from other parties. This method continued until the organization of the first Waters-Pierce Oil Company in 1878. Does that answer your question sufficiently?

Q. Now, since 1878?

A. During and since 1878 the Waters-Pierce Oil Company within its United States territory has acted almost solely as merchandisers for the products of the Standard Oil Company, and in Mexico since the establishment of refineries there it has purchased crude oil outright from the Standard Oil Company and has manufactured and sold it in Mexico to the full extent of the demand.

Mr. LIGHTFOOT: Now, about two pages, Judge.

Q. Have you estimated and can you give me the proportion of oil sold by the Waters-Pierce Oil Company in Missouri to that of its competitors?

A. I have not the figures covering recent periods, but for many years, when I was more actively attending to the business, it was from ninety to ninety-eight per cent. The average for several years was about ninety-seven and one-half per cent.

Mr. LIGHTFOOT: Now, four or five pages—about seven or eight pages there, Judge.

Mr. ALLEN: Mr. Hadley says, "Answer the question." "Question repeated by the Stenographer."

Judge STEDMAN: Is that in the cross examination?

Mr. ALLEN: Yes, sir. There is a long statement there by Judge Priest, and then "Mr. Hadley—Answer the question." Now,
764 we offer the answer, because it makes sense.

A. The Waters-Pierce Oil Company has been, and now is, dependent upon the Standard Oil Company for almost its entire supplies, and as I have already stated, the territory within which the Waters-Pierce Oil Company, present and its predecessors, were to operate was established twenty-eight years ago and has not been changed. I, as the manager of the Waters-Pierce Oil Company,

did not deem it expedient to do business beyond the territory wherein the Waters-Pierce Oil Company was thoroughly and fully equipped.

Q. Why didn't you deem it expedient?

A. Well, my judgment was against it, General.

Q. Why was your judgment against it?

Mr. ALLEN: Well, we don't care for this. There is a lot of objections. Just read that question over there—"Mr. Hadley—Why didn't you deem it expedient?"

Q. Mr. Hadley—Why didn't you deem it expedient to extend your equipment and do business at other points in the State of Missouri?

A. It is a very difficult matter, General Hadley, to specifically define the basis of a judgment arrived at which is based upon a great many years of experience, but if the question is to be answered from the standpoint of today, it would be that the Waters-Pierce Oil Company is not equipped to do business in Kansas City.

Q. Why haven't you equipped it to do business there?

A. Because the Waters-Pierce Oil Company never contemplated doing business in Kansas City.

Q. Why didn't it contemplate doing business in Kansas City?

A. Because the original Waters-Pierce Oil Company agreed—(Judge Stedman interrupted).

Judge STEDMAN: We object to that answer, because it is immaterial and irrelevant, and because it relates to transactions with the Waters-Pierce Oil Company of 1878, which is dissolved, and
765 because that company is not a party to this suit.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

A. Because the original Waters-Pierce Oil Company agreed it would confine its operations to the territory in which it and its predecessors has transacted its business.

Q. Who did it agree with?

A. It agreed, I should say, with Colonel Oliver H. Payne. The individuals I presume you are asking for?

Q. The representative of what company?

A. At that time the Standard Oil Company of Ohio.

Q. As a result of that agreement the Waters-Pierce Oil Company, in the State of Missouri, has confined its business to certain territory, and the Standard Oil Company has confined its business to certain territory?

A. As to the Waters-Pierce Oil Company, yes. As to the Standard Oil Company I have not now, and have never had, any means of knowing the reasons for its operations.

Q. So far as the Waters-Pierce Oil Company is concerned, your testimony is that according to an agreement it has not sold in the State of Missouri?

A. That was only the initial reason. I gave you the main reason first.

Q. But there was an agreement in the matter?

A. I have stated so.

Q. Since the organization of the Waters-Pierce Oil Company in 1878 down to the time of the disorganization you were a minority stockholder, were you not?

A. I was.

Q. And what was the percentage of your holdings at the beginning of the organization of the Waters-Pierce Oil Company?

766 A. Practically forty per cent.

Q. What was it at the time of the organization of the Standard Oil Trust in 1882?

A. The same.

Q. Did it continue the same down to the time of the reincorporation in 1900?

A. It did.

Q. And the assets of the company was at that time divided upon that basis?

A. I have so stated.

Q. And on the reorganization of the company on May 29th, 1900, how much stock did you then own?

A. One hundred per cent.

Q. Did you own that yourself?

A. I subscribed for and gave my own check, which was honored at the bank, for the total amount; received the certificates in my name and held them.

Q. How soon did you transfer any portion of those certificates to anybody else?

A. The transfer I suppose you mean endorsed on the back, and hand the certificates to other people?

Q. Yes, sir.

A. Several months afterwards.

Q. How long?

A. Three, four or five months.

Q. Do you remember what month it was?

A. I do not.

Q. To whom did you deliver the stock certificates that you did deliver?

A. To Mr. Garth, Cashier of the Mechanics' National Bank, New York.

Q. Representing whom?

767 A. That I can not say.

Q. How many shares of stock did you transfer?

A. Sixty-eight and one-half per cent.

Q. Practically leaving you owning how much?

A. Thirty-one and one-half per cent.

Q. Why did you transfer that stock?

A. I transferred the stock because it was understood that I would do so.

Q. At the time of the organization of the new company?

A. Not verbally or by any understanding, but tacitly so understood?

Q. With whom?

Judge STEDMAN: Now, this answer—I would like for Your Honor

to examine it—shows that the witness has no knowledge of the matter, and we object to it because it shows he has no personal knowledge of the transaction, and it is hearsay.

Mr. ALLEN: It is disclosed a little further on, Your Honor. It shows that it was an arrangement by his attorney with the attorney of the Standard Oil Company. It is disclosed further on exactly how it came to his knowledge, that it was an arrangement made by Mr. Johnson, attorney of the Waters-Pierce Oil Company, with the attorneys of the Standard Oil Company.

Mr. LIGHTFOOT: And he became a director, also.

The COURT: What is the question you object to?

Judge STEDMAN: It's the answer.

The COURT: To which question?

Mr. LIGHTFOOT: "With whom?"—with whom did he have the understanding.

The COURT: The jurors want to retire, Mr. Sheriff.

(The jury retired.)

The COURT: The objection is overruled.

Judge STEDMAN: We except.

(The jury returned.)

768 Mr. ALLEN: To get the connection, Mr. Lightfoot, you had better go back a question or two.

Q. Why did you transfer that stock?

A. I transferred the stock because it was understood that I would do so.

Q. At the time of the organization of the new company?

A. Not verbally or by any understanding, but tacitly so understood.

Q. With whom?

A. I think I shall have to refer that to my attorney, Mr. J. D. Johnson.

Q. We will refer it to his Honor, the Commissioner.

A. I don't know. I was trying to help the General.

Q. I hadn't asked for assistance, Mr. Pierce. Didn't you know to whom you were to transfer that stock?

A. There never was any understanding to whom I was to transfer the stock.

Q. I didn't ask that. I asked you if you didn't know to whom you were to transfer the stock.

A. If you will make your question specific, I will answer it.

Q. Answer that question.

A. I don't know.

Q. Do you know to whom you transferred it?

A. I have answered that, I transferred it to Mr. Garth.

Q. Did Mr. Garth become the owner of that stock?

A. So far as I know, yes.

Q. How long did Mr. Garth continue to own that stock?

A. I do not know. The stock continued in my name. I had no more reason or ability to know who held the certificate than I would if I had passed the certificate to any bank or any individual in this or any other city.

769 Q. Then, if I understand you, you were informed by your attorney that an agreement had been made by which, upon the organization of the new company, you should transfer sixty-eight and one-half per cent. of the stock to some unknown party?

Judge STEDMAN: Wait a moment. We object, Your Honor, to the question because the question calls for hearsay, and the answer gives hearsay,—asks for information from his attorney and he answers that the information was given by his attorney.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

A. Practically, yes.

Q. That was the information to you?

A. Practically.

Q. Your testimony is now, that within a few months after the organization of the new company you parted with the controlling interest to some party whose identity was not disclosed to you and whose identity is not disclosed now?

A. Practically that is correct.

Q. When did you become aware of the identity of this mysterious person?

A. In the month of June, 1904.

Q. By what means—a telegram?

A. Telegram from my son from St. Louis, stating that the stock had been presented to the Secretary and transferred from my name to the name of Mr. M. M. Van Beuren.

Q. Did you know who Mr. M. M. Van Beuren was?

A. I had never heard of him.

Q. Have you learned since who he was?

A. Only through the public press.

Q. That he was the son-in-law of John D. Archbold?

A. I have seen it so stated.

770 Q. Did you receive any dividends between the time that you transferred the stock to Mr. Garth and the time you were informed by your son that it was held by Mr. Van Beuren?

A. You mean on the stock that was transferred by me to Mr. Garth?

Q. Yes, sir.

A. I did.

Q. What did you do with the dividends?

A. Transferred them to another party in New York.

Q. To whom?

A. I think Mr. Bayne, who was connected with the Seaboard National Bank of New York. I don't know what his position is.

Q. How did you happen to give them to Mr. Bayne?

A. Under request.

Q. From whom?

A. I am not sure whether it was through some representative of the Waters-Pierce Oil Company in this office, or through Mr. Tilford in New York.

Q. Mr. Tilford? Who is Mr. Tilford?
A. I know four Mr. Tilfords.
Q. Who was the Mr. Tilford who ordered you to give the dividends on this stock to Mr. Bayne?
A. I do not recall whether it was Mr. W. H. or H. M. Tilford.
Q. It was one or the other?
A. I think so, or it may have been a notice from my office. I spent a great deal of time in New York, and the dividends were remitted to me in the East, and it may have been that the information came to me from the office in St. Louis.
Q. What business was W. H. and H. M. Tilford in?
A. They are connected with the Standard Oil Company.
Q. Of New Jersey?
A. Really, I couldn't locate the corporation.
Q. Have they offices at 26 Broadway?
771 A. I think so.
Q. They are members of the Domestic Trades Committee of the Standard Oil Company?
A. I think not.
Q. What committees?
A. I believe Mr. W. H. Tilford is a member of the Executive Committee. I do not know the position occupied by Mr. H. M. Tilford.
Q. He has some position with the Standard Oil Company at 26 Broadway?
A. I could not say.
Q. During the time between the incorporation of the company and the transfer of this stock to this gentleman who you have mentioned, Mr. Garth, what did you do with the dividends you received upon the stock, if you received any?
A. My impression is that they were paid to——

"Mr. PRIEST: That question assumes that there were dividends paid. There has been no evidence that there were dividends paid."

A. I do not know that I received any dividends.
Q. Do you remember whether you did or not?
A. No, I do not recall.
Q. Turning to the stock-book of the Waters-Pierce Oil Company which has been introduced in evidence, I will ask you to look at the stamps upon the back of this Certificate No. 3 in that book issued to H. C. Pierce, and look at the endorsement upon the cancellation stamp, and then state when it was that you transferred that stock, refreshing your recollection by that endorsement. (Handing stock-book to witness). Look at this revenue stamp upon the back of No. 3 and state if that is your handwriting.

Judge STEDMAN: Wait one moment.—Go ahead.

A. I think it is. (Mr. ALLEN: That is, he thinks it is his handwriting.)
Q. Read what it says.
772 A. "H. C. P., Sept. 4th, 1900."
Q. Is that the date when you transferred that stock?

A. I could not say.

Q. Is that the date when you canceled that stamp by writing your initials and date upon it?

A. It is evidently the date I canceled the stamp.

Q. Turning to the stock certificate itself and the endorsement upon it, it seems that the date of the transfer was about in July, 1904. I will ask you what explanation you have to offer as to why it was you were canceling the stamp, noting the transfer of the stock in 1900, and dating the transfer in 1904?

A. If the notation on the stamp referred to covers the date at which I dispossessed myself of the certificate by handing this certificate to Mr. Garth, I should infer that the other endorsement which indicates that this certificate was returned to the Waters-Pierce Oil Company canceled and other certificates issued in its place, was on the 12th day of July, 1904.

Q. That endorsement says that you transferred it, "I hereby sell, transfer and assign upon July 12th, 1904, this certificate" to Mr. Tinsley and Mr. Tilford and H. C. Pierce.

A. The writing you have just referred to is not my own. I do not know by whom or when it was placed there.

Q. I have not read the writing, but mostly the printing, "I hereby transfer, sell and assign."

A. The signature H. C. Pierce, put there by myself, was put there, I infer, on the 4th day of September, 1900.

Q. Did you date the assignment at the time of the transfer?

A. You mean the cancellation of the stamp or the assignment in writing on the back of the certificate?

Q. The assignment in writing on the back.

A. I did nothing more than cancel the stamp, as shown
773 hereon, and hand the certificate in blank to Mr. Garth.

Q. At the time these certificates were issued, representing the 2,750 shares of the stock of the Waters-Pierce Oil Company, up until September, 1900, where were they?

A. Beyond my knowledge, General.

Q. Did they remain in your possession any length of time after they were issued?

A. The certificates were issued, I should say, on the 29th day of May, 1900.

Q. The first of June, 1900?

A. The first of June.

"COMMISSIONER: I notice there are a number of stamps on the back of that certificate. Are they all canceled on the same date?

"Mr. HADLEY: Yes, sir; that has been gone over before.

"COMMISSIONER: Were they not required to be placed upon the certificate at the date of its original issue?

"Mr. HADLEY: Yes, sir; on June 1, 1900.

"COMMISSIONER: Is that the date of the certificate?

"Mr. HADLEY: Yes, sir.

"Mr. PRIEST: The revenue law required the stamp to be placed on the certificate when issued. Those stamps bear the date of cancellation—June 1, 1900. The revenue law required the certificate to

be stamped when it was transferred. That stamp bears date of September 4, 1900, and that is the date when Mr. Pierce signed his name to the blank transfer. The date of September 4, 1904, was added by the party who held possession of the certificate when he asked it to be transferred upon the books of the company."

Q. I wish you would examine certificate No. 1 of the Waters-Pierce Oil Company, and state for what amount that certificate,—what number of shares it called for.

A. One thousand.

774 Q. Is there a stamp upon the face of that certificate showing the date when it was issued?

A. The certificate is dated June 1, 1900.

Q. Then let me ask you, were the 4,000 shares of the stock of the Waters-Pierce Oil Company issued when the company was incorporated,—the new company?

A. I think so.

Q. That is your recollection, is it, Mr. Pierce?

A. The certificate book shows that they were issued to me on the first of June, which was the date succeeding the incorporation of the present company.

Q. Go back to certificate No. 2, and state the date of that certificate.

A. June 1, 1900.

Q. Is there a cancellation stamp on the face of that certificate?

A. There is.

Q. What is the date of it?

A. June 1, 1900.

Q. That certificate is for how much?

A. One thousand shares.

Q. Turn to certificate No. 3, and state how many shares that calls for.

A. Seven hundred and forty-eight.

Q. Is there a stamp upon the face of that certificate?

A. Yes.

"Mr. PRIEST: What do yo umean by stamp?

"Mr. HADLEY: Revenue stamp."

Q. What is the date of the cancellation of that stamp?

A. June 1st. There are several stamps.

Q. June 1, 1900?

A. Yes, sir.

775 Q. Now, turn to certificate of stock No. 5, and state what is the date of the issue of that stock.

A. June 1, 1900.

Q. Is there a revenue stamp upon the face of that certificate showing the date of its issue?

A. Yes.

Q. What is the date of that?

A. June 1, 1900.

Q. How much does that call for?

A. One share.

Q. That makes a total of 2749 shares, does it not?

A. I have not figured it.

Q. Well, certificate No. 1 calls for 1,000 shares; certificate No. 2 calls for 1,000 shares; No. 3 calls for 748 shares; certificate No. 5 calls for one share, making a total of 2749 shares. I will ask you to look at that stock book and find a single other share of stock with a revenue stamp on the fact of it showing the date of the issue of the stock.

"Mr. PRIEST: I am at a loss to discover the relevancy of this, General.

"Mr. HADLEY: You will see the relevancy of it later on."

A. What was your question, General?

Q. Look at the certificates of stock in that book and see if you can find another share of stock besides the 2,749 that had a revenue stamp placed on the face of it, showing the date of issue.

A. Certificate No. 4, issued June 1, 1900, appears here without any revenue stamps, either on the face or on the back. Certificate No. 8——

Q. What is the alleged date of that issue, or the date upon which it appears to have been issued—that is, the certificate No. 4?

A. June 1, 1900.

776 Q. And yet it has not a revenue stamp on it?

A. Are you referring, General, to the stubs or the certificates that remain in the book?

Q. The certificates remaining in the book.

A. Certificate No. 8, June 1, 1900, has a revenue stamp, marked W. P. O. Co., June 1, 1900.

Q. That makes 2,750 shares, does it not, Mr. Pierce?

A. Really, I have not figured it.

Q. Well, go ahead.

A. No. 9, dated January 14, 1904, which I assume was subsequent to the stamp requirement. Do you wish me to go further?

Q. That has none, of course?

A. That is all there are in the book.

Q. Now, look at these certificates which were issued on June 1, 1900,—that bore a revenue stamp on their face. I will ask you to look in the book of these certificates and state if all of them have revenue stamps on them, bearing date September, 1900.

A. Which ones are you referring to?

Q. That would be certificate No. 1.

A. The question is, have they revenue stamps on the back?

Q. Yes, sir.

A. Certificate No. 1 has a revenue stamp on the face and two on the back.

Q. Certificate No. 2, how about that?

A. You asked for the date of No. 1, didn't you, General?

Q. Yes, sir.

A. Really, I can't make out that date.

Q. Certificate No. 2, look at that.

A. Certificate No. 2 has a stamp on the face.

Q. Has it a stamp upon the back, showing transfer?

A. Certificate No. 2 has two stamps on the back, General.

777 Q. Can you make out those dates?

A. I can not.

Q. Is that transfer signed by you?

A. I signed the transfer in blank.

Q. Did you date it?

A. I did not.

Q. Look at certificate No. 3 and see if that has stamps on the back.

A. There are several stamps on the back, all of which are canceled.

Q. Can you make out the date on those that are canceled?

A. I can on part of them. Those I can make out are September 4th, 1900.

Q. Did you date that transfer?

A. I did not.

Q. Look at certificate No. 4 and state to whom that was originally issued, when, and the number of shares?

A. Certificate No. 4, issued June 1, 1900, to H. C. Pierce; 1248 shares.

Q. Does that bear a stamp on the face of it showing the date of its issue?

A. Not now.

Q. Has it a stamp upon it anywhere?

A. Not now.

Q. Did it ever have to your knowledge?

A. I do not recall.

Q. What was the date of its cancellation?

A. There is a red ink notation on the face, stating it was canceled June 13, 1904, I believe.

Q. At the time of the disincorporation of the Waters-Pierce Oil Company organized in 1878, how many shares of stock did the Standard Oil Company of New Jersey own in it?

A. I think the trustees of the Standard Oil Company of New Jersey held 2778.

778 Q. 2748, wasn't it?

A. 2748.

Q. Then, upon the reincorporation of the new company in 1900, the first three certificates called for 2748 shares, and they were signed by you and issued June 1, 1900, bearing the stamp upon the face, and were transferred by you, according to the stamp on one of them, in September, 1900?

A. How do you mean, signed by me as President or individual?

Q. Signed by you as President and endorsed by you on the back.

A. All certificates were signed at that time by me as President.

Q. And they were endorsed by you on the back, were they?

A. Certificates Nos. 1, 2 and 3, totaling 2748 shares, were signed by me at the bottom of the blank transfer on the back of each certificate.

Q. And the cancellation stamps upon certificate No. 3 show that they were canceled in September, 1900?

A. Stamps on the back of certificate No. 3 show that they were cancelled September 4, 1900.

Q. Now, when were you informed by your attorney that you were to assign that number of certificates to Mr. Garth or some person whom you did not know?

A. I think at the time——(Judge Stedman interrupted the reading.)

Judge STEDMAN: Wait a moment. We object to the question and answer, for the reason that it calls for hearsay and the answer gives hearsay.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

A. I think at the time of the organization of the present Waters-Pierce Oil Company.

Q. Were you paid anything for those shares?

A. I was.

Q. Who paid you?

779 A. Mr. Garth.

Q. Had you ever known Mr. Garth before that?

A. I had not.

Q. Did you make any inquiry as to who Mr. Garth represented?

A. I did.

Q. Did you find out who he represented?

A. I was told he represented Mr. Charles Pratt.

Q. Who was Mr. Charles Pratt?

A. Mr. Charles Pratt's home was in Brooklyn. He was connected with the Standard Oil Company.

Q. So, then, your understanding, to come down to the gist of the matter, Mr. Pierce, was that upon the reorganization of the company you should transfer the same number of shares of stock to Mr. Pratt of the Standard Oil Company that the Standard Oil Company of New Jersey held in the old company?

Judge STEDMAN: May it please Your Honor, we object to the question because it calls for hearsay, and the answer gives hearsay.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

A. I was told by my attorney, Mr. John D. Johnson, that he had made such an arrangement with the general counsel of the Standard Oil Company.

Q. And you carried out that agreement?

A. I did.

Q. So that upon the reorganization of the new Waters-Pierce Oil Company the proportion of your ownership in the stock was the same as in the old company?

A. You mean as represented by the certificates?

Q. No, as represented by actual facts.

A. As represented by the certificates, my ownership in the new company represented on the books of the Waters-Pierce Oil

780 Company, my ownership in the new company was 3996 shares——

Q. But in reality——

A. According to my understanding—— (Judge Stedman interrupted reading.)

Judge STEDMAN: We object to that, because the question gives hearsay.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

A. According to my understanding, as I was informed by my attorney, Mr. J. D. Johnson, the 2748 shares which have just been referred to was to be transferred, belonged to and was to be transferred to the Standard Oil Company or its representatives.

Q. Then, to come down to the facts in the case, and that is what I want to get at, the Standard Oil Company of New Jersey, or the Standard Oil Company, continued to have the same interest in the new company that it had in the old?

A. I believe so.

Q. And you so understood at the time?

A. I understood either at the time or shortly afterwards——

Judge STEDMAN: We object now to what he is informed by his attorney. That answer is hearsay.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

A. (concluded). When I was informed by my attorney, Mr. Johnson.

Mr. ALLEN: Did you read all of that answer?

Mr. LIGHTFOOT: Yes, sir.

(The answer was re-read, as follows):

A. I understood either at the time or shortly afterwards, when I was informed by Mr. Johnson, my attorney.

Q. Then from the time of the organization of the new company up to the present time, the Standard Oil Company has remained the owner of that 2750 shares of stock, has it not?

A. Not so far as the books of the company is concerned,
781 but so far as my belief and understanding is concerned.

Q. How long did Mr. Pratt hold them in his name?

A. They were never in Mr. Pratt's name.

Q. Who succeeded Mr. Pratt——

A. The certificates remained in my name from the date on which I handed them to Mr. Garth, which I assume was September 4, 1900, until some time in June, 1904, when they were transferred from my name to the name of Mr. M. M. Van Beuren. My knowledge of who held these certificates, the certificates themselves, in the interim, is beyond me.

Q. And all that time the dividends that you were paid upon this stock went to a representative of the Standard Oil Company?

A. Any dividends upon the 2748 shares which came into my possession was immediately transferred by me to the Seaboard National Bank of New York.

Q. And you understood, did you not, that you were transferring it there for the Standard Oil Company?

A. I presume so.

Q. When did this percentage of ownership between you and the Standard Oil interests arise in the Waters-Pierce Oil Company, the old company I mean, the 1250 and the 2750 shares?

A. Immediately subsequent to my purchase of Mr. Waters' interest in the forty per cent. originally subscribed in the first company by Waters, Pierce & Company.

Q. That was in what year?

A. I do not recall.

Q. Well, that was in 1887, was it not? It is when you succeeded Mr. Waters. No, that was in 1890, when Mr. Waters ceased to be a director or stockholder.

A. If that was the year, that was the time.

Q. That was the year he ceased to be a director?

A. Then it was during that year that the percentage of
782 the ownership in the company between the Standard Oil Company and myself was fixed.

Q. Became 1250 as against 2750?

A. Yes.

Q. Prior to that it had been forty per cent. and sixty per cent.?

A. Prior to that it had been forty and sixty, and prior to that it had been forty, forty and twenty, according to the original division.

Q. So from 1890 to the present time the Standard Oil Company or its representatives have held the 2750 shares, or a controlling interest in the Waters-Pierce Oil Company?

A. In the first Waters-Pierce Oil Company and in the second Waters-Pierce Oil Company, yes.

Q. Now, why was it on the organization of the new company you did not have the ownership of the Standard Oil Company appear upon the books of your company?

"Mr. PRIEST: I do not think that is material in this case.

"I think the question is proper."

Q. Answer the question, Mr. Pierce.

A. Are you asking for my personal reasons, General?

Q. Yes, sir. I am asking for the reasons.

A. My personal reasons were that it had been—— (Judge Stedman interrupted the reading.)

Judge STEDMAN: We object to that question, Your Honor, because it is hearsay.

The COURT: Let me see the answer. (Examines the answer.) The objection is overruled.

Judge STEDMAN: We except.

A. My personal reasons were that it had been agreed by my attorney and the general counsel of the Standard Oil Company that the stock should stand in my name.

Q. Was that to cover up something, Mr. Pierce?

A. It was for the purpose of enabling me to absolutely
783 own, control and operate the Waters-Pierce Oil Company.

Q. How did that enable you to own, control and operate the Waters-Pierce Oil Company, when in September the stock was transferred, in accordance with the previous agreement, over to Mr. Pratt, a representative of the Standard Oil Company?

A. It is notoriously known that people in whose name stock appears, whether they own it or not, do own and control and vote the stock so long as it stands in their name, and the mere fact that they have parted with the certificates does not take from them the power to vote and control the stock.

Q. But during that period I have understood you to say that the Standard Oil Company, in reality, owned that stock?

A. My understanding is that they did.

Q. Why didn't you want that fact to appear upon the records of the Waters-Pierce Oil Company?

A. Because I wished myself to own, control, direct and vote the stock which represented the ownership of that company.

Q. Although you had endorsed the stock, signed your name to the transfer, and the stock itself had passed out of your possession?

A. Exactly.

Q. And remained in the possession of Mr. Garth, representing Mr. Pratt, who represented the Standard Oil Company?

A. I do not know. Whether the certificates remained in his name I do not know; but I do know that I controlled and operated the property under my ownership until the stock was transferred out of my name, when I became a minority instead of a majority stockholder in the company.

Q. You never was a majority stockholder in the company, except in fixing this transfer?

A. I paid for all the stock with my own check, and the stock remained in my own name and I managed the company through my stock ownership.

784 Q. You understood that you should not remain the owner of any larger proportion than you held in the old company?

Judge STEDMAN: We object, may it please the Court, because it calls for hearsay.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

A. I had the understanding through my attorney that I was to remain the owner of record of the stock, and to control the company and continued to do so so long as the stock remained in my name; that was the object of putting the stock in my name.

Q. It was not to enable you to get a license in the State of Texas that you handled the transaction in that way, was it, Mr. Pierce?

"Mr. PRIEST: We object to that as entirely immaterial.

"COMMISSIONER: The objection is sustained."

Q. You said in your direct examination, "Up to the Spring of 1904 the Standard Oil Company made no attempt to interfere in any way with my management and control of the Waters-Pierce Oil Company, but at that time they transferred the stock which had stood in my name to Mr. M. M. Van Beuren, and began in other ways to assume a control over the affairs and operations of the company." In that answer you referred, did you not, to the same stock that you have spoken of as having been transferred to Mr. Garth?

A. I did. Not transferred, General, on the book, but transferred so far as the certificates themselves are concerned.

Q. Transferred by endorsement. So your statement, then, Mr. Pierce, as I understand it, is that in both the old company and the new company you continued in charge of its operations up until 1904?

A. That is correct.

Q. And whatever the company did from 1900 up until 1904, it did under your management and control?

A. I believe so.

785 Q. Then you say the Standard Oil Company transferred this stock that you had endorsed in blank, to M. M. Van Beuren, and began in other ways to assume a control over the affairs and operations of the company. In what other ways did they begin to assume a control over the affairs and operations of the company?

A. I said that the Standard Oil Company transferred to M. M. Van Beuren the stock which I had endorsed in blank. This is the reverse of your statement.

Q. I was simply giving your statement.

A. I did not endorse it in blank to M. M. Van Beuren.

Q. No, you endorsed it in blank to the Standard Oil Company.

A. I endorsed it to no one. I endorsed it in blank.

Q. I read the statement as it was given.

A. Your statement was that it was endorsed in blank to M. M. Van Beuren.

Q. No, sir. You are getting off the question.

A. I do not wish to get off the statement. I endorsed the certificates in blank, and they were afterwards transferred to M. M. Van Beuren.

Q. I asked you in the other question, in what other ways besides securing the transfer of this stock to M. M. Van Beuren did the Standard Oil Company begin to assume a control over the affairs and operations of the Waters-Pierce Oil Company.

A. Ousting directors that I had elected, and substituting those of its own selection, and in sending men here to manage the Waters-Pierce Oil Company, sending men into the territory of the Waters-Pierce Oil Company.

Q. Anything else?

A. Everything that would follow such a changed condition of affairs.

Q. Did they change in any way the conduct of the business of the Waters-Pierce Oil Company besides changing the personnel of the management?

786 A. Very materially.

Q. Did they begin to sell oil in competition with the Standard Oil Company of Indiana?

A. I could not say as to that, General. I was not here at the time.

Q. And did they enlarge or change the territory of the Waters-Pierce Oil Company?

A. I could not say as to that, either. I was not here.
Q. Did they commence to get oil from any different sources?
A. That I can not say. I presume not. You mean other sources than themselves?
Q. Yes, sir, than themselves.
A. I presume not.
Q. You said in your answer this morning, "I protested against this conduct as a violation of their agreement with me and as contrary to the representations I had made to the people of Texas." Now, when had they made such an agreement with you?
A. In 1878, when the first Waters-Pierce Oil Company was organized.
Q. That was the agreement you referred to, was it?
A. Certainly.
Q. With whom was it made?
A. The individuals of the Standard Oil Company of Ohio.
Q. Name some of them.
A. Colonel Oliver H. Payne.
Q. He is now dead, is he?
A. Very much alive. His father, General, is dead,—the ex-Senator.
Q. Who else?
A. Colonel W. P. Thompson.
Q. Is he dead?
A. Unfortunately, yes. Mr. Horace A. Hutchins.
Q. Is he dead?
A. Alive. To a certain extent, Mr. John D. Rockefeller.
787 You are speaking now of 1878?
Q. Yes.
A. I think that comprises the gentlemen I made my transactions with.

Mr. LIGHTFOOT: Skip about half a page.
Judge STEDMAN: Where does it begin?
Mr. LIGHTFOOT: At "Who audited the books."

Q. Who audited the books of the Waters-Pierce Oil Company?
A. The auditors of the Waters-Pierce Oil Company for the Waters-Pierce Oil Company and the auditors of the Standard Oil Company for and on behalf of the Standard Oil Company.
Q. How often did the Standard Oil Company audit the books of the Waters-Pierce Oil Company?
A. As often as it saw fit to do so.
Q. And after the reorganization who audited the books of the Waters-Pierce Oil Company?
A. So far as I know, and up to the time I ceased to handle the details of the Waters-Pierce Oil Company, only the auditors of the Waters-Pierce Oil Company.
Q. Did you ever have any knowledge of any Standard Oil Company auditors auditing the books of the Waters-Pierce Oil Company?
A. Not between 1900 and 1904.
Q. Did you after 1904?
A. Yes.

Q. Were you here all the time from 1900 up until 1904?

A. Very little of the time, General.

Q. Did you say that during that period you were in control of the Waters-Pierce Oil Company?

A. I did.

Q. And do you say you have no knowledge of the auditing of the books of the Waters-Pierce Oil Company by auditors of the Standard Oil Company?

788 A. I have no knowledge of the auditing of the books of the Waters-Pierce Oil Company by the auditors of the Standard Oil Company between the first of June, 1900, and some time during the year 1904.

Q. For the purpose of refreshing your recollection, Mr. Pierce, I will ask you if you do not remember on the 24th day of November, 1903, of being notified by Mr. J. P. Gruet in a letter written by him in St. Louis and sent to you in New York that an auditor from the Standard Oil Company office had been detailed to audit the books of the Waters-Pierce Oil Company, and that he arrived in the City of St. Louis on the 20th day of November for that purpose, and calling upon you to send some notes here in order that the books of the Waters-Pierce Oil Company might appear straight?

A. I have no knowledge of any such letter. I doubt very much if it was ever received. During that time, General, I was very ill, and for months, one period more than a year, I was unable to be seen or consulted in regard to business. That condition lasted over a period of three or four years.

Q. I will ask you if on November 30th you did not answer that letter by sending to Mr. Gruet the notes referred to?

A. I have no remembrance of it.

Q. Do you remember the circumstances of sending any notes to Mr. Gruet in response to a request from him?

A. I do not remember having been requested to do so, verbally or in writing, or having complied with the request or in any manner anything concerning it.

Q. But you did learn that the auditors of the Standard Oil Company afterwards were auditing the books of the Waters-Pierce Oil Company?

A. I was informed verbally and by communications during the year 1904 and the fore part of the year 1905 that the Standard Oil Company auditors were auditing the books of the Waters-Pierce Oil Company.

Q. Did you learn the individuals who were doing this?

789 A. I did not. I did not ask or was not advised.

Q. Did you protest against that?

A. I do not remember that I did, General. I may have done so.

Q. Did the old Waters-Pierce Oil Company have any representative at 26 Broadway?

A. Do you mean a special representative?

Q. Yes, sir.

A. To whom it paid a salary?

Q. Yes, sir.

A. I think, General, that for a great many years the first Waters-

Pierce Oil Company did pay to one or more, probably several, employes of the Standard Oil Company at 26 Broadway for special services rendered by such employes to the Waters-Pierce Oil Company in connection with purchases of supplies for the Waters-Pierce Oil Company and the shipment of those supplies to Mexico. I will explain that we shipped nearly everything that went into the upkeep of refineries in Mexico from New York, and the tin for the manufacture of cases went from there and iron for tanks, in fact everything that entered into the manufacture of oil down there was shipped from New York, and we employed Standard Oil representatives who were familiar with our requirements to purchase and forward those supplies, bill them against the St. Louis office, and it is my impression that we paid such employes from the St. Louis office during a number of years prior to the dissolution of the first Waters-Pierce Oil Company.

Q. They were not regular employes of the Waters-Pierce Oil Company?

A. I should say they were to the extent of the employment.

Q. That is, when they would do work for you their time for doing that work would be charged against the Waters-Pierce Oil Company?

A. Only.

Q. Did you make any reports to 26 Broadway to any representative of the Standard Oil Company prior to 1900?

790 A. Myself, personally?

Q. No, the company.

A. I think I did regularly.

Q. And to whom were those reports made?

A. An auditor of the Standard Oil Company or the Comptroller of the Standard Oil Company, or various heads of departments of the Standard Oil Company.

Q. And what did those reports disclose, Mr. Pierce?

A. They disclosed a synopsis of the Waters-Pierce Oil Company's business as it related to these various departments to whom the Waters-Pierce Oil Company reported.

Q. Those reports showing the general conduct of the business of the Waters-Pierce Oil Company went to H. M. Tilford, did they not?

A. That I am not sure of. I had no occasion to know. I do not know to what particular individuals they were sent.

Q. Was not W. H. Tilford regarded as the man to whom the reports of the Waters-Pierce Oil Company came finally for supervision?

A. I think the reports were mailed to the heads of the departments who were interested in the character of the report.

Q. And H. M. Tilford had been a director of the company?

A. W. H. Tilford and H. M. Tilford both had been. You are speaking of the old or new company?

Q. I am speaking of the old company.

A. Both had been directors.

Q. But H. M. Tilford was a director up until 1900?

A. I think so.

Q. During that time the reports of the Waters-Pierce Oil Com-

pany's business went to the various heads of departments at 26 Broadway?

A. Such reports as it gave to the Standard Oil Company went to the various heads of departments, but those reports covered only a very limited part of the Waters-Pierce Oil Company's business.

791 Q. Did you make a marketing report?

A. I presume so, although I do not remember the details. At one time I perhaps could have enumerated most of them to you. There were a good many.

Q. Did you make a report as to salaries?

A. I think the reports as to salaries were made once a year.

Q. To whom?

A. I am not sure, but I think to Mr. H. M. Tilford.

Q. Did you make a lubricating oil report?

A. I don't remember that we did; possibly.

Q. Did you make a specialty report, report as to the sale of specialties?

A. Not to my knowledge.

Q. You don't know that you did not?

A. I do not know that we did not. We made generally whatever reports were desired.

Q. Whatever were called for?

A. Yes, sir.

Q. After the organization of the new company was there any change in that system of reports to 26 Broadway?

A. After the new company was organized the reports and communications were sent to Mr. R. H. McNall, 26 Broadway, instead of the various heads of departments of the Standard Oil Company, as had been the case during the existence of the old Waters-Pierce Oil Company.

Q. What was the purpose of that change, Mr. Pierce?

A. The purpose of the change was that the growth of the Waters-Pierce Oil Company's business had very largely increased the correspondence with the various heads of the Standard Oil Company, and in addition a multiplicity of manufacturing and refining plants of the Standard Oil Company as sources from which the Waters-Pierce Oil Company received its supplies had increased very largely

792 the correspondence between the Waters-Pierce Oil Company and the various interests and the individuals of the Standard Oil Company, and practice proved that very frequently delays in receiving orders, transmitting orders, shipping and otherwise handling the business between the two occurred, and as a business transaction it was found expedient, and so, upon my advice, a representative was selected, to be called Commercial Agent of the Waters-Pierce Oil Company, who was to reside in New York, have his office at 26 Broadway, the home of the Standard Oil Company, through whom all communications from the various Standard Oil Company interests, plants and heads of departments were to be transmitted to the home office of the Waters-Pierce Oil Company in St. Louis, and to whom similar reports and communications from the home office in St. Louis of the Waters-Pierce Oil Company were to be transmitted

to the various refineries, plants and heads of departments of the Standard Oil Company. Mr. McNall was selected for the position because, as chief clerk to Mr. H. M. Tilford, Mr. McNall had become familiar with most of the transactions which it was thus sought to consolidate, and Mr. McNall was engaged by me; his salary was fixed; he was furnished with stationery, and, until he resigned this year, Mr. McNall continued to be the New York representative of the Waters-Pierce Oil Company, not only in connection with those transactions with the Standard Oil Company but to a very large extent Mr. McNall represented the Waters-Pierce Oil Company in purchasing supplies of every kind and character used by the Waters-Pierce Oil Company in its business in Mexico.

Q. He had been a clerk of Mr. Tilford before that, had he?

A. I think his position was assistant to Mr. H. M. Tilford.

Q. He continued, after he became the Commercial Agent of the Waters-Pierce Oil Company, in the office of Mr. Tilford?

A. I always found Mr. McNall in one of the offices of Mr. Tilford. You mean actually in the room?

Q. Yes, sir.

793 A. He did.

Q. Why was it the reports to Mr. McNall from the Waters-Pierce Oil Company were addressed to him at 75 New Street?

A. That is beyond my knowledge. I only learned it through your developments.

Q. You were running the company here, Mr. Pierce?

A. General, I have been living in New York for the last three or four years, or rather that is where I spend most of my time. My health has required me to be there.

Mr. LIGHTFOOT: We skip the next.

Q. You say you were not aware that these reports to Mr. McNall were addressed to him at 75 New Street, the rear of 26 Broadway?

A. Not until I read it in the newspapers.

Q. When did Mr. McNall cease to be the Commercial Agent of the Waters-Pierce Oil Company?

A. I do not recall, General, the exact time, but——

Q. It was this year, was it, after the institution of this suit?

A. It was during this year. It was February, March, April or May.

Q. And during the time that Mr. McNall held the position of Commercial Agent there were full reports as to the business of the Waters-Pierce Oil Company sent to him, were there not?

A. No, they were not full reports of the business. Very meager percentage of the reports were sent to him.

Q. Reports were sent to him showing the financial condition of the business, were there not?

A. That I do not know.

Q. You were in charge of the company?

A. I was in charge of the company, but I could be in charge of a good many companies and not be on the spot.

Q. Here are a lot of reports furnished me as reports made to Mr.

McNall by the Waters-Pierce Oil Company, and I will read
794 the headings of them. Take for instance the first one here, "Sales and deliveries of refined oil by Waters-Pierce Oil Company during the month of ——." Do you remember of that report being made to Mr. McNall?

A. I do not.

Q. Here is the next report, a report as to the marine sales?

A. If you will pardon me, I am quite willing to say that they were all sent to him. If my attorney handed you those blanks, I am willing to say that they were all sent.

Q. Here is a report as to the barrels as compared with the same month of the year before. Do you know of that report being sent?

A. Won't you accept my general statement as to that, General?

Q. Here is a report showing the balance of the money on hand, sent to Mr. McNall?

A. I am not personally familiar and have not been for years familiar with the character of the reports that were furnished.

Q. Then you are not prepared to say that full reports were not sent to Mr. McNall?

A. I repeat again that reports of only a small percentage of the transactions of the Waters-Pierce Oil Company were sent.

Q. The results of the conduct of the business of the Waters-Pierce Oil Company, you say, were not reported to Mr. McNall?

A. The results of some parts of the business of the Waters-Pierce Oil Company were always reported by the first Waters-Pierce Oil Company to the Standard Oil Company representatives, the heads of departments. Reports covering a part of the business of the second Waters-Pierce Oil Company were sent to Mr. R. H. McNall.

Q. At 26 Broadway?

A. 26 Broadway was the last address that I knew of.

Q. Do you say that reports as to the financial condition of the Waters-Pierce Oil Company were not sent to Mr. McNall?

A. In a general way, General Hadley. I know of the
795 character of the reports that were formerly sent from the St. Louis office by the old company to the Standard Oil Company and by the new company to Mr. McNall, and when I say that they coverd only a small per cent. of the business, I am referring to the business in its entirety. The details of the business, the method of enlarging the business, the policy of the business, and matters of that kind, were not reported to Mr. McNall or the Standard Oil Company, but only results of transactions already had were reported.

Q. That is what I am getting at. The result of the conduct of the business of the Waters-Pierce Oil Company was reported?

A. Only a part of the business, a small part of the business.

Q. I find here a monthly report of delivery of wax candles, grease, etc. Do you remember that report being sent?

A. I presume it was sent.

Q. And a report of deliveries of lubricating oil during a certain month?

A. I presume it was sent.

Q. And reports of outside oils?

A. I presume it was sent.
Q. Delivery of specialty oil?
A. I presume it was sent.
Q. Marine sales I have already mentioned?
A. I know nothing about that, General.
Q. Comparative sales of barrels, of fifty gallons each, for a certain period as compared with the same period the year before?
A. I think those were sent.
Q. Those were sent to Mr. McNall? Reports of the total sales and net results of the business of the stations of the Waters-Pierce Oil Company?
A. Perhaps that was sent.

Q. The statement showing the cost of barreling and marketing oil sold by the Waters-Pierce Oil Company during a certain month. Do you know of that being sent?

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A. I am willing to repeat my offer to presume all reports were sent which you have there, which you say were handed to you by my attorneys, the attorneys of the Waters-Pierce Oil Company.
Q. We do not agree that they show the entire business of the Waters-Pierce Oil Company?
A. No, for the result is a small part of the business. The business consists much more largely of preparatory work and of execution than it does of results. The results are of very little consequence aside from the profits.
Q. Isn't that what men are in business for?
A. I am, and have been for these many long weary years.
Q. And that is what the Standard Oil Company is in business for?
A. It is so reported.
Q. Here is a report of milk cans, turpentine, fuel, oil, etc. That was sent with your knowledge?
A. I presume it was sent. Not to my knowledge, however.
Q. Here is another report as to deliveries of refined oil and naphtha by tank wagons?
A. That is smaller and more insignificant than anything that has come to my knowledge.
Q. You are somewhat surprised at the detail and insignificant matters that were reported to Mr. McNall?
A. Not at all. Mr. McNall was furnished anything and everything that he asked for as the representative of the Standard Oil Company and its various heads.
Q. Now, here is a report as to the sale and deliveries of naphtha, lubricating oils, other outside oils and merchandising?
A. I presume it was sent.

Q. Now, here is a report of refined oil and naphtha delivered by tank wagons, the semi-annual statement showing the cost of barreling and marketing oil. Do you know of that being sent?

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A. I do not know, but I presume it was.
Q. Now, here is a report showing the monthly statement of the result of the sales and deliveries of refined oils.
A. I do not know concerning it, General. I presume it was sent.

Q. Now, here is a report of the deliveries of lubricating oils, outside oils, refined oil and petroleum merchandised to marine trade?

A. I do not recall that. I did not know we were reporting marine business. I presume it was sent, however, General.

Q. And any system of reports that the different heads of departments at 26 Broadway would call for would be sent to them?

A. The different heads of the different departments of the Standard Oil Company of New Jersey were in the habit of communicating through Mr. McNall, who was stationed at 26 Broadway, their desires, and, as the manager of the Waters-Pierce Oil Company, it was my understanding that the heads of departments requested such information as the Standard Oil Company of New Jersey, who was a minority stockholder in the Waters-Pierce Oil Company, desired to have——

Q. Minority or majority?

A. Majority—desired to have, and, recognizing the right of the largest stockholder in the company to have such information concerning its operations as it desired, I very readily instructed the various heads of the departments of the Waters-Pierce Oil Company to send such information as was asked for.

Q. And that system continued during the entire life of the new company, or since its organization?

A. I can not speak, General, as to the interim during the years commencing with 1904 and ending in June, I think, 1905, or early in 1905.

Q. That was the time that the Standard Oil Company sent
798 out Tinsley and Backus, and some of the older employés of the Waters-Pierce Oil Company were ousted, was it?

A. I think it occurred during that period.

Q. Are you familiar with this cash statement made by the Waters-Pierce Oil Company, a copy of which I hand you?

A. I am.

Q. Did you know that that daily cash statement was sent to Mr. McNall, your Commercial Agent?

A. I did.

Q. And that disclosed, did it not, Mr. Pierce, the financial condition each day of the Waters-Pierce Oil Company?

A. Financial condition of the St. Louis office only.

Q. That was the home office, was it not?

A. It was the home office in this country. In Mexico the City of Mexico was the home office.

Q. Were reports made from the City of Mexico to St. Louis?

A. Always.

Q. Then the result of the conduct of the business in Mexico would be reported to St. Louis?

A. Always.

Q. And then the report from St. Louis went to 26 Broadway?

A. Well, you are asking about this particular report?

Q. Yes, sir.

A. I can not say that this particular report included the cash condition in Mexico.

Q. But the cash conditions in Mexico were reported here?

A. Always.

Q. And this was the controlling office of the Waters-Pierce Oil Company, was it not?

A. It was. That is a part of the percentage of business, General, which I excepted from your statement that we reported everything.

799 Q. Was not the business in Mexico part of the business of the Waters-Pierce Oil Company?

A. Yes, but it would not necessarily be included in a report of that character.

Q. Do you say it was not?

A. No, sir, I do not.

Q. The conduct of the business of the Waters-Pierce Oil Company has been profitable, has it not, Mr. Pierce?

A. It has been satisfactory to me, General.

Q. The dividends of the new company have run something like four hundred per cent. a year, have they not?

A. Do you mean more or less?

Q. Well, about that?

A. Hardly.

Q. How much?

A. Are you asking what they have been?

Q. Yes, sir.

A. From six to seven hundred per cent.

Q. I was too low, then? Why hasn't the Waters-Pierce Oil Company developed oil fields and refined oils?

A. Well, I have not thought it to the interest of the Waters-Pierce Oil Company to do so.

Q. You say the development of oil wells and the establishment of refineries near the point of consumption lessens the cost?

A. The Waters-Pierce Oil Company was not in the business of refining oil in the United States.

Q. You were authorized to do it in your charter?

A. We were authorized to do a good many things we did not do.

Q. Why did you think it not advisable to do so? Was it because you agreed with the Standard Oil Company not to do so?

A. No, sir; there was no such agreement ever made be-

800 tween myself and the Standard Oil Company. On the contrary, the Waters-Pierce Oil Company has built and is operating four very large refineries on its own account absolutely without hindrance of the Standard Oil Company, and has been doing so for the past twenty-five years.

Q. And that has lessened the cost to the consumer?

A. Very materially.

Q. Why haven't you established refineries in Texas, then?

A. Because the Waters-Pierce Oil Company was not prepared to establish oil refineries. It had no facilities for doing so, and it was receiving its refined products from the Standard Oil Company promptly and of good quality and in a way to enable it to care for all of the business that I thought it advisable for the Waters-Pierce Oil Company to engage in, and other people than the Standard Oil

Company, as well as the Standard Oil Company, was refining oil in the State of Texas, and the Waters-Pierce Oil Company has taken from the Standard Oil Company the production of the refinery at Corsicana, and all the products of the Security Oil Company in Texas, and there was no occasion for the Waters-Pierce Oil Company to go into the refining business and invest capital when it could purchase oil from them more cheaply.

Q. At all events, in all of the territory in the State of Missouri in which your company has sold oil it has no refinery, and it has sold no oil which it has refined itself?

A. No burning oil, General. The Waters-Pierce Oil Company manufactures lubricating oils and a great many kinds of oils other than burning oil which it sells within the State of Missouri.

Q. In your territory in Missouri you have sold the refined products that you have gotten from the Standard Oil Company?

A. I think almost entirely.

(Skipped about half a page.)

Q. Prior to 1878 the Standard Oil Company of Ohio had an office here and sold oil here?

801 A. Prior to the organization of the first Waters-Pierce Oil Company the Standard Oil Company of Ohio had an office for one year, or about one year, in the city of St. Louis.

Q. And they sold oil here?

A. It did.

Q. Did Pierce & Company have a refinery here at that time?

A. H. C. Pierce & Company had a refinery; Waters, Pierce & Company had a refinery, but I am not sure if Waters, Pierce & Company ever operated that refinery so far as refining oil was concerned.

Q. Who was in charge of the business of the Standard Oil Company prior to 1878?

A. Where?

Q. Here?

A. William H. Cobb.

Q. Was Mr. C. M. Adams connected with that company?

A. During the year prior to May, 1878, I think Mr. Adams was bookkeeper for Mr. Cobb, for the Standard Oil Company in St. Louis.

Q. On the organization of the Waters-Pierce Oil Company in 1878, the Standard Oil Company ceased to do business in St. Louis, did it not?

A. It did.

Q. And Mr. Adams became connected with the Waters-Pierce Oil Company as Secretary, did he not?

A. He became connected with the company, I think, as Secretary, although I do not remember the exact time.

Q. And from that time up to the present has the Standard Oil Company, to your knowledge, had a tank station or office in St. Louis?

A. I know that it has not.

(Skipped about half a page.)

Q. Did you know the firm of Scofield, Shurmer & Teagle?

A. I knew several members of that firm.

Q. Did you know that they had a place of business here?

802 A. I knew they had a place here and in Springfield, Missouri.

Q. They had tank stations, did they not?

A. Both places.

Q. The same as your company?

A. No, sir; both inferior.

Q. They had some of the same kind?

A. No, sir; not of the same kind. They had tank stations.

Q. From which they distributed oil?

A. Yes, sir.

Q. And the Republic Oil Company succeeded to the business of Scofield, Shurmer & Teagle?

A. I do not know.

Q. Any way, Scofield, Shurmer & Teagle went out of business in 1901 and the Republic came in, did it not?

A. I do not recollect the date. I know that Scofield, Shurmer & Teagle ceased to do business in the Waters-Pierce Oil Company's territory in Missouri, and I know some time afterwards the Republic Oil Company commenced to do business in the city of St. Louis.

Q. Did you know that after the Republic Oil Company took over Scofield, Shurmer & Teagle its tank station at Springfield, Missouri, was discontinued?

A. I know that the tank station of Scofield, Shurmer & Teagle at Springfield was discontinued before the Republic commenced business in St. Louis.

Q. Do you know that the tank station of Scofield, Shurmer & Teagle was not discontinued until after the Republic took over those properties?

A. The Waters-Pierce Oil Company——

Q. Answer the question.

A. I am doing so, directly. The Waters-Pierce Oil Company purchased the Scofield, Shurmer & Teagle plant at Springfield, Missouri, and absorbed it into its own business.

803 Q. Do you say that the Republic Oil Company did not do business for a while in Springfield?

A. So far as I know they did not, and I think I know.

Q. Isn't it a fact that the Republic Oil Company took over the property of Scofield, Shurmer & Teagle at Springfield, and operated that for a while, and then discontinued and removed the tank station?

A. I think I can state positively that it is not a fact, and that the Waters-Pierce Oil Company had no dealings with the Republic Oil Company either at Springfield or elsewhere.

Q. The Republic Oil Company is owned by the Standard Oil Company of New Jersey, is it not?

A. I do not know. I accused the Standard Oil Company of owning the Republic Oil Company and it denied it.

Q. Not in the present year, though?

A. I have not communicated with the Standard Oil Company concerning it during the year 1905.

Q. Does your company own what is known as the International Oil Works?

A. It does.

Q. And operates that as an independent concern?

A. It does not.

Q. How does it operate it?

A. Mr. Grenner is employed on a salary and conducts the business for the Waters-Pierce Oil Company.

Q. How long has that been going on?

A. I should say twelve or fifteen years.

Q. And it sells oil here as a separate concern, does it?

A. I believe it sells oil under the name of International Oil Works.

Q. And maintains a separate office?

A. I think it does.

Q. And maintains tank wagons of its own?

A. Yes, I think so.

804 Q. And yet that company is owned by the Waters-Pierce Oil Company?

A. Yes.

Q. What is the purpose of that concealment?

A. It is not a concealment.

Q. Why, then, do you carry on the business of the Waters-Pierce Oil Company under an alias?

A. Business reasons, all of which are good and sufficient to the management.

Q. Is there any other portion of the business of the Waters-Pierce Oil Company being done under the name of some other company?

A. Locate it, please.

Q. In St. Louis?

A. I can not recall any, General. If I could I would cheerfully do so.

Q. Or in the State of Missouri?

A. That I do not know.

Q. You did operate the Inland Oil Company, did you not?

A. I think not. I think perhaps the Inland Oil Company was absorbed by the Waters-Pierce Oil Company. I do not think it ever owned or operated the Inland Oil Company.

Q. Isn't it a fact that you did operate the Inland Oil Company for a while and its operations were discontinued by orders from 26 Broadway?

A. That is not within my knowledge.

Q. And was not that order sent in a letter addressed to you as President of the Waters-Pierce Oil Company?

A. If it was I never received it.

Q. What is your recollection as to whether the Inland Oil Company was operated for a while and then discontinued?

A. My recollection is very distinct that the Waters-Pierce Oil

Company never owned or operated the Inland Oil Company until it purchased the Inland Oil Company and placed Mr. Gunni-
805 son, its former manager, upon a salary.

Q. Is it operating that company now?

A. I do not think so, although I may be mistaken.

(Skip half a page.)

Q. Do you know John D. Archbold?

A. Very well.

Q. What position does he occupy?

A. I do not know his official title, General. I do know that he was a member of the Executive Committee of the Standard Oil Company. I also know that at various times he has been president of companies connected with the Standard Oil Company.

Q. Did you hear his statement made in this case?

A. I did not hear the statements of any of the gentlemen you have had the honor to examine.

Q. His statement is that the independent refineries in the United States could supply all the business in refined oil in the United States. Did you ever investigate the statistics as to the capacities of the independent refineries?

"Mr. PRIEST: I do not think it is proper, if Your Honor please, what Mr. Archbold says.

"COMMISSIONER: Objection overruled.

"To which action the respondents excepted."

Q. Did you ever investigate the statistics as to the capacities of the independent refineries in the United States?

A. I have not recently investigated the statistics as to the percentage of petroleum products manufactured by the Standard Oil Company and other oil companies in the United States.

Q. Are you able to state that it is not a fact that during the entire existence of the new Waters-Pierce Oil Company that the independent refineries in the United States had a capacity sufficient to supply all the trade in refined oil?

806 A. I am not able to state, because I have not made any investigation.

Q. You are not stating that that is not a fact?

A. No, sir. I have very carefully guarded against making statements I did not know to be correct. I have made no investigations along that line. I had no occasion to do so.

(Skips about half a page and begins with an answer.)

A. No. The first refineries from which the first Waters-Pierce Oil Company received its oil were all located at Cleveland, Ohio. Afterwards, when oil was discovered in the vicinity of Parkersburg, West Virginia, then a number of supplies, certain kinds of supplies, particularly the best brand of Eupion oil, was shipped from Parkersburg, West Virginia. Later, when crude oil was discovered in Ohio and Indiana, and the Standard Oil Company constructed a refinery at Whiting, at a less distance, consequently cheaper, a large percentage of the supplies of the Waters-Pierce Oil Company came

from Whiting, Indiana. So that those three points were practically the sources from which the Waters-Pierce Oil Company, during twenty-five years, received its supply of oil. The supply of oil for the Waters-Pierce Oil Company's territory in Mexico, or its Mexican territory, was all shipped from Philadelphia in the crude state in Waters-Pierce Oil Company's steamers to Vera Cruz and Tampico and afterwards handled exclusively, manufactured and sold, by the Waters-Pierce Oil Company in Mexico. So that the sources from which the Waters-Pierce Oil Company has received its supplies from the Standard Oil Company, up until three or four years, has been almost entirely from Cleveland, Ohio; Parkersburg, West Virginia, and Whiting, Indiana.

Q. There were independent refineries at Cleveland, were there not?

A. In the early days, yes. I think not within the last fifteen or twenty years.

Q. Didn't Scofield, Shurmer & Teagle have one of the largest refineries there?

807 A. They had a very insignificant refinery so far as our requirements were concerned.

Q. It did have a refinery, however?

A. It did.

Q. Did you get any oil from any other refineries besides the Standard Oil Company at Cleveland, Ohio?

A. I think we did.

Q. In the last four years?

A. That I do not recall, General.

Q. There are independent refineries in the State of Kansas?

A. So I have been told.

Q. Did you ever get any oil from them?

A. I think not.

Q. Your oil now comes from Sugar Creek and Neodesha?

A. Neodesha, Kansas; Corsicana, Texas; Beaumont, Texas; Atlantic Refining Company, Philadelphia, and several other points, where the Standard Oil Company now supplies.

Q. And the shipment of these oils is directed by Mr. McNall from 26 Broadway, is it not?

A. Not at the present time.

Q. Up until the commencement of this suit it was, was it not?

A. No, it has never been directed by Mr. McNall. All shipments made to the Waters-Pierce Oil Company, to whatever point, were made under directions from the officials of the Waters-Pierce Oil Company in the St. Louis office.

Q. At whatever price the Standard Oil Company wanted to bill it?

A. At whatever price was the current price of the goods upon the day the order was received.

Q. You did not know that until the order was received, did you?

A. Nearly always we did, because we had the current price of the Standard Oil Company, and we knew.

808 Q. That is, the Standard would sell it at the quoted price?

Mr. ALLEN: That question is not answered.

Q. Now, during the existence of the Waters-Pierce Oil Company, the old one or the new one, did you have the territory in Colorado and New Mexico?

A. Not during the existence of the new Waters-Pierce Oil Company. I think I have during the existence of the first Waters-Pierce Oil Company.

Q. Didn't the old Waters-Pierce Oil Company sell oil a while in the State of Colorado and New Mexico until the Standard Oil Company took it away from them?

A. I think not. I do know that the firm of Waters, Pierce & Company, and its predecessors, sold a great deal of oil, and personally I organized for H. C. Pierce & Company a good deal of territory in Colorado.

Q. But after the organization of the new company that territory was taken over by the Standard, was it not?

A. I think not. I think it was many years after the organization of the first Waters-Pierce Oil Company when the Standard Oil Company, under any name, did business in the territory to which I refer as being operated in by H. C. Pierce & Company.

Q. Did the Continental Oil Company sell oil there?

A. I think not in 1878. The Continental was not in existence at that time.

Q. Has some of the territory in Louisiana been recently taken away from it?

A. None of it.

Q. You still sell oil there?

A. The Waters-Pierce Oil Company sells in Louisiana West of the Mississippi River.

Q. But you don't sell East of that?

A. We have never done so.

809 Q. That is Standard territory?

A. I do not know. I know that the Waters-Pierce Oil Company does not claim it as its territory.

(Skips about a page.)

Q. I am talking United States. Then the fact that the Waters-Pierce Oil Company did from ninety to ninety-eight per cent. of the business was not due to the fact that there were not competitors that had tank wagons and tank stations to supply the trade?

A. At the time the Waters-Pierce Oil Company did the percentage of business you just mentioned there were very few competitors of the Waters-Pierce Oil Company within the territory within the United States in which it did its business.

Q. I am talking of the new company?

A. I am speaking of the new company as well as the old. I doubt if the new company did anywheres near ninety-eight per cent. of the business.

Q. What has the new company done?

A. I should think eighty or eighty-five per cent.

Q. These conditions which you say contributed to the large percentage of the business have not existed since the new company has been in existence?

A. You mean the equipment?
Q. Yes, sir.
A. They have been largely increased and improved. The difference in percentage in former years and now is due almost entirely to the discovery of crude oil in the States of Texas, Louisiana, Kansas and in the Indian Territory and Oklahoma, which has caused a starting up of a great number of small refineries, all of which endeavor to do, and do, a considerable amount of business within the territory in the United States wherever the Waters-Pierce Oil Company operates.

(Skips about two pages.)

810 Q. You could have bought from any one you pleased, but you did not please to buy it from any one but the Standard?
A. Precisely.
Q. And the Standard could have sold to any one they pleased, but its products were almost exclusively handled through the Waters-Pierce Oil Company?
A. I think it was wisdom on the part of the Standard Oil Company to utilize the services of such a good merchant as myself.

(Skips next question and answer.)

Q. What is the cost of producing refined oil?
A. I could not tell you.
Q. Isn't the cost of producing a gallon of refined oil at Whiting about four cents a gallon?
A. I could not tell you.
Q. You said the cost of refined oil in the city of St. Louis has been about eight cents a gallon?
A. I did not.
Q. What was it?
A. I said I did not know. I think Mr. Johnson was kind enough to advance that information, but what it was I do not know. I said I had sold millions of gallons and hundreds of thousands of barrels at four and a half cents a gallon delivered to people in storage cans at their houses, including Kirkwood and Webster, which are several miles in the country.

(Skips nearly four pages.)

Q. How much of the time, Mr. Pierce, between June 1st, 1900, and the month of March, 1905, did you spend in St. Louis?
A. Between what dates?
Q. June 1st, 1900, the date of the organization of the new company, and the time of the commencement of this suit?
A. As I recollect, I was here nearly all of the year 1900.
811 Q. How about 1901?
A. I think the greater part of 1901.
Q. How about 1902?
A. A part of 1902.
Q. What part?
A. One-half or two-thirds.
Q. How about 1903?

A. In 1903 and 1904 I was ill East and unable to be in St. Louis.

Q. When was it that Mr. Finlay became president of the company?

A. The first time or second time, General?

Q. The second time?

A. I think February, 1904.

Q. February, 1904?

A. That is my remembrance.

Q. And in 1905 were you here in St. Louis?

A. In 1905 I was here in the month of June——

Q. Month of June?

A. July,——

Q. Were you here prior to June?

A. —and August. I think so, although I am not sure.

Q. What time?

A. Perhaps June was the first time I was here during the year 1905.

Q. During the years I have asked you about you were also in the railroad business, were you not?

A. I was.

Q. Were you giving personal attention to the management of the railroad business of the Mexican Central?

A. To a certain extent, to the necessary extent.

(Skips about half a page.)

Q. Was it made known to you prior to your seeing this system of reports which were made to 26 Broadway, on yesterday,
812 that those reports were made?

A. I do not comprehend your question.

Q. Prior to bringing them to your attention yesterday, by showing you these reports, had you known what reports were made to 26 Broadway?

A. In a general way I knew of all reports at one time, but as those reports have been covering a period of twenty-five or twenty-six years, I did not give my personal attention to any additions or deductions from the volume of reports which were currently sent to the Standard Oil Company.

Q. Then you were not familiar with what reports were made?

A. I did not make any such statement.

Q. I asked you the question if you were?

A. I was familiar with the fact that a great many reports were sent, but the exact headings of the reports were of no importance to me. I simply approved of the sending of the reports, but what the headings were I was not familiar with.

Q. That was the extent of your information upon that subject, was it?

A. Yes.

Q. Were you familiar during this period I have mentioned with this circumstance of the business, of orders being received by your company—by that I refer to the Waters-Pierce Oil Company—from persons who did business in the Standard Oil Company's territory and orders being received by the Standard Oil Company from per-

sons residing in the Waters-Pierce Oil Company's territory and what was done, if you know, in transferring those orders from one company to another?

A. I do not think, General, that I ever had personal knowledge of transactions of either character. All I know concerning it is principally what I have read in the press since these proceedings commenced. I am quite sure I never had personal knowledge of transactions of that kind.

Q. Do you refer to what you read in the press of admissions
813 made here by counsel of the Waters-Pierce Oil Company that such orders were handled in the way I have indicated?

A. No. I refer to your charges.

Q. You did not see the admissions made by counsel that they were handled in that way?

A. Not at all.

Q. If such orders were handled in that way by the Waters-Pierce Oil Company and the Standard Oil Company of Indiana, that fact has not come to your knowledge?

A. It has not.

Q. Were you aware of any change in the system of paying the auditors of the Standard Oil Company who audited the books of the Waters-Pierce Oil Company after the reorganization?

A. Won't you make that a little more explicit as to what you mean by "system"?

Q. When auditors came here from 26 Broadway prior to June 1st, 1900, to audit the books of the Waters-Pierce Oil Company, who paid those auditors?

A. I always supposed the Standard Oil Company paid them.

Q. The Waters-Pierce Oil Company did not pay them?

A. So far as I knew, they did not, and I should have made objection to any payment to the Standard Oil Company's auditors.

Q. After 1900 how was it handled?

A. It was not within my knowledge until since these proceedings commenced that any change from my former understanding had been made. I have been informed that at a date, which I assume was since the organization of the present Waters-Pierce Oil Company, the Standard Oil Company auditors were paid by the Waters-Pierce Oil Company, but it was without my knowledge, and certainly would have been stopped had I known at the time of the charges being made. I should not have permitted them.

814 Q. Then has it come to your knowledge since testimony has been taken in this litigation that when the Standard Oil Company, through Wade Hampton, the General Auditor, wanted to audit the books of the Waters-Pierce Oil Company, Mr. Hampton would send an auditor here and direct that he should be placed upon the pay-roll of the Waters-Pierce Oil Company while he was auditing the books of the Waters-Pierce Oil Company?

A. That was not in my knowledge in any instance since the organization of the first or second Waters-Pierce Oil Company until the past few months.

Q. Then, for the first time, it came to your knowledge?

A. Yes, sir.

Q. So if that system was carried on from the time of the organization up to the time of the commencement of this suit, that was a detail of the business also that you did not know?

A. General, I doubt if that system was inaugurated very soon after the incorporation of the present Waters-Pierce Oil Company, but whether or not it was, it was not within my knowledge—it was not reported to me.

Q. Now, I am not certain whether I asked you yesterday, and my recollection is that I did not, as to whether you knew of the dividends which were declared by the Waters-Pierce Oil Company being regularly reported to the Commercial Agent at 26 Broadway?

A. I did not know that they were reported specifically as dividends. I knew that upon the days dividends were paid that a cash statement, which was sent to the Commercial Agent—I presume you refer to Mr. McNall?

Q. Yes, sir.

A. Included the disbursements, the cash disbursements, of that day, and, as a rule, at least the report sent to me, showed the amount of dividends and to whom it was remitted.

Q. Do you now recall, Mr. Pierce, that you did know that
815 daily cash statements were sent to Mr. McNall?

A. No, I do not recall that they were.

Q. Until I showed you the reports yesterday?

A. Oh, no, I beg your pardon, General. I do not want to answer in that way. Daily cash statements have always been sent to the Standard Oil Company and I knew they were sent daily to Mr. McNall, and I so testified yesterday.

Q. I may not have correctly recollected your testimony, then. But you did not know that reports of dividends were regularly made except as they might appear in the daily cash statements made to Mr. McNall?

A. How do you designate a report, General—by letter?

Q. By letter or any other means of communication—telegrams?

A. I never knew that they were reported by letter. They were not reported to me by letter. They were reported simply by having attached to the daily cash statements——

Q. I was not asking about your——

"Mr. PRIEST: Let him answer the question.

"COMMISSIONER: He can answer the question. I think he has a right to complete that answer."

A. The dividends were made usually upon regular days in each month, and upon the day a dividend was made, a memorandum of disbursements for that day was attached to the cash statement which I received, and I presume a similar one was sent to the Standard Oil Company, or to whatever name represented the Standard Oil Company, that we were authorized to send it to, and that statement was the only notice of dividends which I understood was

sent to the Standard Oil Company or to Mr. McNall, or whoever might be its representative to receive dividends.

Q. Did you understand that dividends were reported only in that way?

A. Did I understand that they were reported in that way?

Q. Yes.

A. I never knew that they were otherwise reported.

816 Q. Did you know that they were in that way reported to Mr. McNall?

A. I assume that they were.

(Skip about three pages.)

Q. Were you familiar with the form of the reports that were made to Mr. McNall in reference to the business of the Waters-Pierce Oil Company in this, that in addition to the letters to him a duplicate copy, without address or signature, was also sent?

A. To whom?

Q. To Mr. McNall?

A. I was not familiar with it, General.

Q. That was also a method of reporting the business of the Waters-Pierce Oil Company, or communicating with the Standard Oil officials with reference to the business of the Waters-Pierce Oil Company, that was not within your knowledge?

A. I have not admitted that such reports were sent.

Q. Assuming that they were and assuming that the evidence shows it?

A. I have no knowledge of it.

Q. You have no knowledge of that?

A. No, sir.

Q. When did Mr. Tinsley come to St. Louis to take charge or to become connected with the management of the business of the Waters-Pierce Oil Company?

A. Mr. Tinsley came to St. Louis, as I remember, in April, 1904, to assume charge of the accounting department as successor to Mr. Gruet.

Q. Did he remain from that time?

A. I think Mr. Tinsley remained from the time he first came until the month of June, 1905, or perhaps he left as early as April or May, 1905.

Q. But you think Mr. Tinsley, from the time that he came in April, 1904, remained in connection with the management of the business of the Waters-Pierce Oil Company until after the

817 commencement of this litigation?

A. From the time he came in 1904 until he left St. Louis finally, Mr. Tinsley remained in the office of the Waters-Pierce Oil Company, but not at all times in connection with the management of the Waters-Pierce Oil Company.

Q. When did he become an officer?

A. I think in February, 1904, he was elected Vice President.

Q. He was elected Vice President, was he not, Mr. Pierce, before Mr. Van Beuren became the owner of this stock or before it was transferred to him upon the stock books?

A. Several months before.

Q. Well, then, was it against Mr. Tinsley's coming here to take charge that you protested?

A. Not at all. I acquiesced in it. I want to answer that differently. Mr. Tinsley did not come here to take charge of the business of the Waters-Pierce Oil Company. Under an agreement with me, Mr. Tinsley was suggested by the S. O. Company, or rather by Mr. W. H. Tilford——

Q. Representing the S. O. Company?

A. Representing the Standard Oil Company, as an entirely competent man to succeed Mr. J. P. Gruet, who, for a long time, had been the Secretary of the Waters-Pierce Oil Company, but because of unfortunate infirmities had become disqualified to longer hold the position. I had never met Mr. Tinsley. I had never heard of Mr. Tinsley, but, as I secured Mr. Gruet originally from the Standard Oil Company and took him upon the recommendation of its then auditor, I also accepted Mr. Tinsley to succeed Mr. Gruet upon the recommendation of Mr. W. H. Tilford, who represented the Standard Oil Company, and it was distinctly understood between Mr. Tinsley and myself that Mr. Tinsley was to come here as the auditor or comptroller of the company and to have only to do with
818 the books and accounts of the company; that under no circumstances was he to interfere with the management of the company, and the position of Vice President was given to Mr. Tinsley simply to supply the position which would be made vacant by Mr. Gruet's retirement and my retirement from the presidency of the company, which I held up to that time, and Mr. Andrew M. Finlay's election to succeed me, Mr. Finlay having been Vice President since the organization of the present company.

Q. What was the date then when the Standard Oil Company began to assume a control over the affairs and operations of the company?

A. Mr. Tinsley did not come here immediately upon his election in February. He was not in the city when he was elected. I was ill, as I recall, and unable to be here, and sent instructions, to perhaps Mr. Finlay, the Vice President, and Mr. J. D. Johnson, the General Counsel, as to how the election should be conducted and sent the proxies for my stock, which at that time amounted to within four shares of the entire four hundred thousand dollars of capital stock, or four thousand shares, and it was voted under my proxies for Mr. Tinsley.

Q. That was at a directors' meeting?

A. No, sir, stockholders' meeting. Voted for Mr. Tinsley as director, and the election of officers occurred at the same time. My health having continued such as to make it impossible for me to give close attention to the business, as the business required, Mr. Finlay was placed in my position and Mr. Tinsley was elected as Vice President. Mr. Tinsley did not come to St. Louis, as I recall, until perhaps two months afterwards, and when he came he was assigned by the President, Mr. Andrew M. Finlay, to the position in reference to the accounts which had been made vacant by the retire-

ment of Mr. Gruet. Mr. Tinsley at first made no objections to taking charge of the books as the request was made, but finally Mr. Tinsley refused to take charge of the books and accounts.

819 Q. You haven't touched upon an answer to my question. My question was, when was it the Standard Oil Company began to assume a control over the affairs and operations of the company against which you protested, as testified to by you from your written statement on yesterday, what day?

A. The action of Mr. Tinsley in refusing to perform the duties which it was agreed between Mr. Tilford, on behalf of the Standard Oil Company, and myself on behalf of the Waters-Pierce Oil Company, that he should perform, caused a great deal of distress to Mr. Finlay, the President of the company, and in the course of time, Mr. Finlay failing to enforce his authority as against Mr. Tinsley's stronger character so wrought upon Mr. Finlay as to completely break down his health, resulting in Mr. Finlay being obliged to go abroad, where he remained several months.

Q. I do not care about the condition of the health of the gentleman. Tell me when it was they commenced to assume this management and control against which you protested.

(Colloquy between counsel shown in the testimony being read is omitted by agreement of counsel in this case.)

A. Immediately upon Mr. Finlay's departure for Europe for the purpose of restoring his health, Mr. Tinsley openly assumed charge of the office of the Waters-Pierce Oil Company in all departments. He first took over the management of the Mexican department, removed it entirely from—he took away from General Manager Ackert the management of the Mexican division and assumed entire charge of it himself. He sent to Mexico as manager under the local general manager of Mexico a Standard Oil Company employé from Cleveland, Ohio, who was entirely unfamiliar with Mexico, its customs, people, languages or the business of the company in Mexico. The effect of that was to cause the very efficient manager of the company to resign his position. The answer to your question

820 as to dates is being given as explicitly as is possible, as the period covered all the time from the time Mr. Finlay went abroad until Mr. Tinsley was removed from his position.

Q. When did Mr. Finlay go abroad?

A. I think in the month of May or June.

Q. 1904?

A. Yes. I am not through with my answer.

Q. You have given the answer the question called for.

A. The resignation of the General Manager in Mexico left that department practically without a proper head. Mr. Tinsley proceeded at different dates to remove old and important officers, or rather employés, of the company, heads of departments, and substitute in their places inefficient, incompetent and inexperienced men. The number of changes in the management of the company equaled two or three hundred in the aggregate, and in nearly all cases those substituted were Standard Oil Company employés.

When this information came to my knowledge sufficiently to enable me to take action I protested to the officials of the Standard Oil Company in New York against the unwarranted action of Mr. Tinsley in violating the agreement entered into between the Standard Oil Company and myself at the time of the organization of the first Waters-Pierce Oil Company in 1878, and the implied continuation of that understanding at the time the present Waters-Pierce Oil Company was organized.

Q. Now, are you through? When did you make your protest?

A. At the time.

Q. At what time?

A. I made a protest, I think, in the month- of April, May and June.

Q. 1904?

A. 1905.

Q. 1905?

A. 1905.

Q. That was a year after it occurred?

821 A. I beg your pardon. Mr. Finlay did not leave until the Fall—I am not sure when Mr. Finlay left. If I knew when Mr. Finlay left I could tell.

Q. You didn't understand me. Your protests were made a year after Mr. Tinsley came here?

A. I did not answer that way. If I knew when Mr. Finlay went on his vacation I could tell you more clearly.

Q. It was in the Spring of 1904?

A. That Mr. Finlay went on his vacation?

Q. I understood you to say so.

A. That is not the date. I am very positive of that.

Q. Do you know?

A. I can easily ascertain, and then I will have some premise from which to answer your question.

Q. Was it the date when the stock was put in the name of M. M. Van Beuren that you protested?

A. Not at all. The stock was put in Mr. Van Beuren's name, I think, in the month of June, 1904. Mr. Tinsley's usurpation of the management of the business did not commence until very late in the Fall of 1904, and was not vicious until the beginning of the year 1905, and my protest—you asked the date of my protest?

Q. Yes.

A. My protest was made in the most positive manner in the month of May and in the month of June, 1905.

Q. That is, after the commencement of this suit?

A. I believe so. I do not recall the date of the suit.

Q. Let me call your attention to your testimony on yesterday when you made this statement, "Up to the Spring of 1904 the Standard Oil Company made no attempt to interfere in any way with my management and control of the Waters-Pierce Oil Company, but at that time they transferred the stock which had stood

822 in my name to M. M. Van Beuren and began in other ways to assume control over the affairs and operations of the com-

pany. I protested against this conduct." But this protest was not made until the year after the Spring of 1904?

A. There is nothing in that statement which specifies that the protest was made in the year 1904. The stock was transferred in the month of June, 1904, I think. That specifies the first of April. That statement was intended to cover the time when Mr. Tinsley first came to St. Louis, but Mr. Tinsley did not immediately upon his arrival in St. Louis, or some considerable time afterwards, undertake to supersede the President in the management of the business, and he did not actively do so until Mr. Finlay's health compelled Mr. Finlay to absent himself, when Mr. Tinsley, as Vice President of the company, became the executive of the company and was in full power to enforce all of his wishes.

Q. Then it was in the Fall of 1904 and in the early part of 1905 you say the management of Mr. Tinsley became vicious?

A. Correct.

Q. When did you learn of the transfer of this stock to Mr. Van Beuren—on the day it was made?

A. On the day it was made.

Q. Did you protest against that?

A. I did not. There was no occasion for me to protest.

Q. What did you mean when you said in your written statement on yesterday, "At that time"—referring to the Spring of 1904—"they transferred the stock which had stood in my name to M. M. Van Beuren. I protested against this conduct." Did you mean you protested against the transfer of the stock?

A. I may have protested against the transfer of the stock as being contrary to the understanding with me. The specific methods of protest or the dates of the protest are not now within my mind. It would be very easy to recall them.

823 Q. Who did you protest to against the transfer of this stock to Mr. Van Beuren?

A. If I made a protest, I protested to Mr. Rogers or Mr. Archbold or Mr. W. H. Tilford.

Q. Why did you protest to them?

A. Because I assumed that they were the people responsible to me for the keeping of the agreement that was made when this company was organized.

Q. I understood you to say yesterday that you did not know who Mr. M. M. Van Beuren was?

A. I did not mention Mr. Van Beuren's name. You are not following the facts.

Q. You follow the question and I will take care of the facts.

A. I will.

Q. Did you know who Mr. Van Beuren represented when this stock was transferred to him?

A. I want the privilege of correcting your statement.

Q. I will stand by my statement, you correct your own.

A. I did not mention Mr. Van Beuren's name. I said Mr. Archbold.

Q. Why did you protest to Mr. Archbold against the transferring

of the stock to Van Beuren if you did not know who Mr. Van Beuren represented?

A. I repeat that at that time I did not know who Mr. Van Beuren was, and it was necessary for me to make an investigation to ascertain who Mr. Van Beuren was. I did not protest because the stock was transferred to Mr. Van Beuren. I protested, if I made any protest, against the stock being transferred out of my name to any one.

Q. Let me see, I want to get this matter straight. Did you or did you not protest against the transfer of this stock to Mr. M. M. Van Beuren?

A. I certainly protested against the transfer of the stock to M. M. Van Beuren, but I do not recall if I protested at the time.

824 You have undertaken to fix the date as April, 1904, as being the date of the protest in the statement which I yesterday read. I now wish to say that I do not recall the reason the protest was made at that time or whether it was made subsequently or what time subsequent, if at all.

Q. So you can not make the statement when a protest was made, if one was made?

A. Except generally.

Q. You stated yesterday that you did not know who Mr. Van Beuren was until it was admitted by Mr. Rogers in the testimony taken in New York in March, 1906, that Mr. Van Beuren held this stock for the Standard Oil Company of New Jersey?

A. I did not know who Mr. Van Beuren was. I do not now know who Mr. Van Beuren is except by hearsay. I have never been informed except through the press as to who Mr. Van Beuren is.

Q. When you did protest against this transfer of stock to Van Beuren did you go to Rogers, Archbold and Tilford?

A. I was protesting against the transfer. In the first place, I do not say that I did protest. I do not recall whether I did or not at that time. Subsequently I am very sure that I did protest against the transfer of that stock, and possibly I protested in writing, but I went to Mr. Rogers, Mr. Tilford and Mr. Archbold to file my protest because they were the people responsible to me for the keeping of the Standard Oil Company's agreement with me.

Q. Did you go to them because you thought Mr. Van Beuren represented them?

A. Ask that again

Q. Did you go to them because you thought Mr. Van Beuren represented them?

A. Not at all. Mr. Van Beuren was a quantity of no value in my mind.

Q. You never made any inquiry of them as to who he was?

825 A. I did not. Afterwards I asked them who Mr. Van Beuren was.

Q. You knew that the stock was Standard Oil Company's stock, did you not?

A. I did not know to whom the Standard Oil Company had transferred the stock. I did not know whether Mr. Van Beuren was a broker or whether he was connected with the Standard Oil Company.

I knew nothing about the disposition of the shares of stock after I passed them over to Mr. Garth in the year 1900.

Q. For Mr. Pratt or for the Standard Oil Company?

A. I did not pass them over to Mr. Pratt for the Standard Oil Company.

Q. Who did you pass them to?

A. I sold those certificates of stock for a cash consideration, paid at the time by Mr. Garth, Cashier of the Mechanics National Bank, as I testified yesterday. Mr. Pratt went with me there and was present and the money was paid to me by Mr. Garth, not paid by Mr. Pratt. The certificates were handed by me to Mr. Garth and not to Mr. Pratt.

Q. When did you get the check?

A. The moment of transferring the certificates.

Q. When did you transfer the certificates?

A. As I recall, it was during the Summer of 1904. Those certificates will show. I don't recall the exact date, General. 1900, I mean—not 1904.

Q. Didn't you get a check for $274,800.00?

A. I do not recall the amount. I got a check for the value of the stock at par.

Q. Just the par value of the stock?

A. That is correct.

Q. Didn't you get that check, Mr. Pierce, at the time the new company was organized?

A. I did not. I did not receive any money. When the new company was organized I gave my own check on the Fourth
826 National Bank for four hundred thousand dollars. That check was charged to my account and it was taken over by the treasurer of the new company as the full capital stock. I held the certificates of stock in my own possession from that date, from the date of the organization of the present Waters-Pierce Oil Company, until I transferred the twenty-seven hundred—what is the amount, do you recall?

Q. 2748.

A. The 2748 shares to Mr. Garth in the office of the Mechanics National Bank of New York some two or three months afterwards. I received from Mr. Garth his check on the Mechanics National Bank for the par value of those shares. I had not received any money from any one prior to that date for any shares of the Waters-Pierce Oil Company, and the shares had not been out of my possession. I did not receive any pay for those shares at the time of the organization of the present Waters-Pierce Oil Company, or at any subsequent time until Mr. Garth received the 2748 shares and handed me his check on the Mechanics National Bank for $274,800.00, which I sent to my bank in St. Louis, and it was deposited to my individual credit.

Q. Now, I understood you to say yesterday, or I recollect you as saying yesterday, that the fact that this transaction was to be handled in this way was made known to you by your attorney as a result of an agreement had with the General Solicitor of the Standard Oil Company. Did I understand you correctly?

Judge STEDMAN: We renew our objection to that on the ground it is hearsay.

The COURT: It is overruled.

Judge STEDMAN: Exception.

A. I think we did, General.

Q. Had you had any conversation or understanding with the Executive Committee of the Standard Oil Company that the transaction was to be handled in that way?

827 A. Your question is, had I had an understanding with the Executive Committee of the Standard Oil Company prior to any date, General?

Q. Prior to the time that the stock was transferred to Mr. Garth through you in the manner in which you have stated?

A. Had I had any understanding with the Executive Committee as to the transfer of this stock?

Q. Yes, sir.

A. And the method of transferring it to Mr. Garth?

Q. Yes, sir.

A. I think not, General. I think it all came through Mr. Johnson, my attorney.

Q. I refer more specifically to your written statement yesterday in which you said, "When the license of the first Waters-Pierce Oil Company to do business in Texas was revoked I sought to settle with the State, so that we could continue our business there. I was told very frankly by a prominent citizen of Texas that the people of that State would not tolerate the methods of the Standard Oil Company, and that no corporation controlled by that company would be permitted to carry on business in Texas. I explained this situation fully to the Executive Committee of the Standard Oil Company, and they agreed that I should organize a new company, the stock of which I should hold." Do you remember of testifying that way yesterday?

A. Perfectly.

Q. When was that understanding had with the Executive Committee of the Standard Oil Company that you should organize a new company and hold the stock?

A. Your question, General, applies to an entirely different proposition. Your previous question, if you please, related to my having an understanding with the Standard Oil Company, or its Executive Committee, with regard to my sale of a part of this stock after it was issued by me to Mr. Garth or some one else. My answer to

828 that was I did not recall, and I am quite sure that there was no understanding with the Executive Committee of the Standard Oil Company upon that subject—that the transaction was handled by Mr. J. D. Johnson, my attorney. In answer to your present inquiry, I will say that immediately after the suits were brought, or rather after the suit was determined upon, that the license be taken away from the Waters-Pierce Oil Company in Texas, I conferred repeatedly with the Executive Committee of the Standard Oil Company in regard to the methods to be employed to secure a reinstatement of the old Waters-Pierce Oil Company in the State

of Texas and the securing of a new license enabling it to do business there, and the statement that you have read is absolutely correct.

Q. When was that conference with the Executive Committee of the Standard Oil Company at which the Executive Committee agreed that a new company shoud be organized of which you should hold all the stock?

A. I am not able to state the exact time, but those conferences were very frequent during the Winter and Spring of 1900.

Q. And prior to the organization of the new company?

A. Prior to May 29th, 1900.

Q. And do you wish now to be understood as saying that all the understanding that you had at that time with the Executive Committee of the Standard Oil Company in reference to the stock of the new company was that it should be held in your name?

A. My present recollection is that that is the case; that I had no personal understanding with any of the members of the Executive Committee prior to the organization of the new Waters-Pierce Oil Company as to what disposition was to be made of the stock which was to be issued to me and for which I was personally to pay.

Q. What did you mean when you said that the reason of the organization of this new company was that the people of
829 Texas would not tolerate any corporation which was controlled by that company?

A. The language of the statement is very explicit and plain as to its contents. I refer you to it.

Q. And did that refer to the old Waters-Pierce Oil Company?

A. Did the statement quoted in there refer to the old Waters-Pierce Oil Company? Certainly, because the new company had not then been incorporated.

Q. Then the statement referring to a corporation controlled by the Standard Oil Company refers to the old Waters-Pierce Oil Company?

A. Naturally.

Q. Now, Mr. Pierce, didn't the Standard Oil Company after this transfer of stock have the same power of control at least and the same stock interest in the new company that they had in the old company?

A. Repeat it.

Q. The question was whether the Standard Oil Company had the same interest in the new company that they had in the old, did they not?

A. The Standard Oil Company at the time that the new company was incorporated and the license obtained in the State of Texas had no stock interest whatever in the Waters-Pierce Oil Company. It was entirely vested in myself and for several months afterwards the stock certificates remained in my name, and for years afterwards the stock stood in my name upon the books of the new Waters-Pierce Oil Company.

Q. Then the difference between the old company and the new company was that the Standard Oil Company stock in the new company appeared in another name?

A. I will leave you to draw your own conclusions. I am unable to.

Q. What member of the Executive Committee of the Standard Oil Company was it that you had this understanding with about the organization of the new company?

A. It included practically all the members of the Executive Committee except one or two.

830 Q. After Mr. Tinsley assumed this management and control that you have spoken of was there any change to your knowledge in the system of reports made by the Waters-Pierce Oil Company to 26 Broadway?

A. Not within my knowledge.

Thereupon the Court adjourned until 2.30 P. M.

Court opens at 2.30 P. M.

The COURT: Proceed, Gentlemen.

(*Deposition of H. C. Pierce Resumed.*)

Q. Was there any change made in the trade territory of the Waters-Pierce Oil Company?

A. I think there was none whatever.

Q. And no change to your knowledge in the trade territory of the Standard Oil Company of Indiana?

A. I am not advised as to the territory of the Standard Oil Company of Indiana.

Q. Was there any change after Mr. Tinsley assumed this management and control in the source from which the oil that was sold by the Waters-Pierce Oil Company was received?

A. I think not.

Q. Was there any change in the course that had previously been followed as to the sale of oil by the Standard Oil Company of Indiana in Waters-Pierce Oil Company's territory?

A. I do not comprehend your question.

Q. Was the oil that company sold in the Waters-Pierce Oil Company's territory still sold almost exclusively through the Waters-Pierce Oil Company under Mr. Tinsley as it had been previously?

A. I comprehend your question to mean, did the Standard
831 Oil Company continue to sell supplies to the Waters-Pierce Oil Company. Yes.

Q. And the Waters-Pierce Oil Company continued almost exclusively to sell the products of the Standard Oil Company?

A. It did.

Q. Then in so far as the reports to 26 Broadway were concerned; in so far as the territory of the Waters-Pierce Oil Company was concerned; in so far as the source from which supplies came, the Waters-Pierce Oil Company went ahead the same under Mr. Tinsley as it had under your management and control?

A. There may have been immaterial changes. Mr. Tinsley may have sent a different kind of report, more or less reports, but in the main the business, so far as the source of supplies and territory

within which the sales were made, that remained the same, as it does today, General.

Q. At the time of the reorganization of the Waters-Pierce Oil Company, and just prior to which, had there been a one hundred per cent. dividend on the stock of the Waters-Pierce Oil Company declared?

A. I can not say. Dividends were so frequent I can not specify any particular one.

Q. You mean that one hundred per cent. dividends were so frequent that they now escape your recollection?

A. I have answered it.

Q. That is your answer, is it?

A. It is not my answer to your last question, no.

Q. I will ask you if it is not a fact that when the reorganization was decided upon if there was not a dividend of one hundred per cent. declared and if there was not given to each of the six stockholders a check representing his dividend which represented the amount of the capital stock?

A. How was that?

(Question repeated by Stenographer.)

832 A. I think I comprehend the question, General.

Q. Well, please answer the question.

A. It is not a fact. No such dividend was ever made. No such dividend was ever made with the intention of disposing of the original capital stock or any part of the capital stock of the Waters-Pierce Oil Company.

Q. I didn't ask you as to the intention. I asked you if it was not a fact that on May 21st, 1900——

A. I was obliged to answer that way in order to qualify my answer.

Q. You can qualify in any way you see fit, but I want you to answer the question. I asked you if upon May 21st, 1900, there was not by the old Waters-Pierce Oil Company a dividend of one hundred per cent. declared and by a check drawn on the National City Bank of New York there was not paid to the Standard Oil Company of New Jersey $280,906.00; a check to you of $127,722.00; a check to H. M. Tilford of $102.00; a check to Mr. Finlay of $102.00; to Adams $102.00 and to Gruet $102.00?

A. I do not recall, but it is quite likely that such a dividend was made. It would not have been anything unusual for it to have been made on that date or any other day. I do not recall that it had anything to do with the reorganization of the new company. Still my memory may be defective in that regard.

Q. Do you remember any other instance when a one hundred per cent. dividend was declared?

A. I think so.

Q. When?

A. I do not recall the date. Dividends are paid as the surplus permits.

Q. You don't say that the dividends were not paid as I have indicated?

A. Any dividends would be paid in checks to the stockholders of record.

Q. Now, following the organization of the company, did
833 the new company give notes to the old company?

A. I do not recall the details of that. It was managed entirely by Mr. Johnson, the attorney of the company. I would be very glad to enlighten you if I could answer. It can be easily ascertained by refreshing my memory by examining the accounts.

Q. Let me ask you this question, that following this dividend of four hundred thousand dollars, practically, which I have referred to, that there were six notes given by the new Waters-Pierce Oil Company to the old Waters-Pierce Oil Company which were transferred by the new Waters-Pierce Oil Company to the stockholders in accordance with the percentage of the stock that they held?

A. I do not recall the details of that transaction, General. I do recall that notes were given, but the details of it I do not recall.

Q. Don't you recollect of receiving from the old Waters-Pierce Oil Company a note given by the new Waters-Pierce Oil Company amounting to $1,227,399.00?

A. I received a note. I do not recall the exact amount.

Q. And were not those notes that were given by the new company to the old company and those given by the old company to the different stockholders paid by dividends in the new company?

A. I can not say how they were paid. My note was paid, I know.

Q. Wasn't it paid by dividends in the new company?

A. I can not say, General. I don't know. I can not state as to the details of the transaction. My mind was too much employed to attend to matters of that kind.

Mr. LIGHTFOOT: Now, here is a colloquy between the attorneys, and then he says, "I refer you now to a letter." And then we skip over. "Mr. Hadley—I refer you now, Mr. Pierce, to correspondence in the month of November, 1903, which was submitted to counsel yesterday, and to which I call your attention, in which this letter was written, 'H. C. Pierce, New York. Dear Sir' "—then we
834 have to skip again. It goes over several pages. It says, "Witness examines papers."

Mr. ALLEN: Away over past the colloquy between Judge Priest and General Hadley.

Mr. LIGHTFOOT (reading): "Mr. Hadley—Do you not recall, after seeing these papers"——(Judge Stedman interrupts.)

Judge STEDMAN: May it please Your Honor, we object to the entire course of the examination in respect to the letter which was exhibited by Attorney General Hadley to Mr. Pierce, upon the ground, first, that the contents of the letter are not shown; we are in ignorance of what the contents of the letter are, and the letter itself is the best evidence both of its existence and of its contents; and, in the second place, so far as we can discover, not knowing the contents of the letter, that the same are immaterial and irrelevant.

The COURT: Let me see what it is you are offering. (Court inspects the deposition.) What is the purpose of this testimony?

Mr. ALLEN: Well, the main purpose is to show that he testifies

that he was running the concern, and we want to show that he did not know that the Standard Oil Company—we will show by other testimony, it will be an agreed fact in the case that the Standard Oil Company did audit the books of the concern, and he states there that he did not know that that was being done, and yet he states that he was running the company and dominating it; and, in addition to that, to test this witness's statement along those lines.

The COURT: Haven't you already shown that he didn't know whether the Standard Oil Company audited the books or not?

Mr. ALLEN: Well, of course, I think we have, but it is cumulative on that point.

Judge STEDMAN: May it please Your Honor, this inquiry relates to a letter which, we have presumed, is intended by the other side to show communication of information to him upon this subject. Now, we are completely in the dark as to the contents of the letter
835 which would give the information upon this subject—that *that* is the point of our objection, that it is sought by reference to this letter to visit upon him knowledge of the fact which they are seeking to elicit when the letter itself it not produced.

Mr. ALLEN: It appears from those questions that General Hadley tried to refresh his memory, and after reading whatever was handed him—I don't know what it was—he still said that he had no knowledge of those things.

Mr. LIGHTFOOT: The question on page 121 by Mr. Hadley gives the merit of whatever there is in the question.

Mr. ALLEN: We don't care anything about the letter except he said he didn't read it and didn't write it. We haven't it, and don't know what it was.

The COURT: The objection is sustained, except to——

Judge PENN: What part is sustained?

Mr. LIGHTFOOT: Except as to the part where it commences, "Mr. Hadley—Do you not recall"—and the answer, too?

The COURT: Yes, sir, all that bears on what you offer on that subject.

Mr. HADLEY:

Q. Do you not recall, after seeing these papers, the fact that in November, 1903, by reason of the fact that the Standard Oil Company had an auditor who was auditing the books of the Waters-Pierce Oil Company, that you sent some notes given by the new Waters-Pierce Oil Company to the old Waters-Pierce Oil Company and endorsed to you, back here, to the Waters-Pierce Oil Company's office here in St. Louis?

A. I have no recollection of the transaction or of writing the letter, and I think I testified yesterday that I had no recollection of the Standard Oil Company auditing the Waters-Pierce Oil Company's books subsequent to the organization of the present Waters-Pierce Oil Company until within the past year or two.

Mr. LIGHTFOOT: I think that is all we care to offer at
836 present.

Mr. ALLEN: That's all that we offer from it.

Judge STEDMAN: If the Court please, we would like to offer some of the testimony of Mr. Pierce omitted by the State at this time.

Mr. ALLEN: Well, we prefer that they put it in when they come to offer their testimony, after we have closed, and we object to the interruption. There is quite a lot of that testimony there, and we object to the interruption to put it in now.

Judge STEDMAN: May it please Your Honor, the testimony offered is a part of the testimony given by Mr. Pierce in Missouri, case up there. This testimony is introduced by agreement between counsel. Now, we think that we ought to be permitted at this stage of the proceedings to offer the remainder of his testimony, or so much as we think is admissible and desire to offer, in order that the jury may now connect all of these matters in their minds.

The COURT: Very well. I will permit you to do so.

(Portions of deposition of H. C. Pierce read by defendant.)

(Judge Stedman read the questions and Judge Penn the answers.)

Q. Are you now or have you been at any time a stockholder in the Standard Oil Company of Indiana?

Judge PENN: That's the fourth question, Mr. Allen, in the direct examination by Judge Priest.

Mr. ALLEN: I have it here.

A. I am not and never have been.

Q. Are you now, or have you at any time been, a shareholder in the Republic Oil Company?

A. I am not, and never have been.

Q. Are you now, or have you at any time been, a shareholder in the Standard Oil Company of New Jersey?

A. I am not, and never have been.

Q. Have you ever owned any certificates of interest or any
837 interest in any form in the so-called Standard Oil Trust?

A. I have not.

Q. Have you at any time ever owned or do you now own any stock in any other oil company than the Waters-Pierce Oil Company?

A. I have not, and do not now own any stock in any other oil company other than the Waters-Pierce Oil Company.

Q. You are informed as to the ownership of the shares of the stock of the Waters-Pierce Oil Company, are you?

A. I am.

Q. Now, I will ask you if the Standard Oil Company of Indiana or the Republic Oil Company own any stock of the Waters-Pierce Oil Company?

A. They do not.

Judge STEDMAN: Now, the next—"Does the Standard Oil Company of New Jersey own any stock in the Waters-Pierce Oil Company?"

Judge PENN: The answer to that was read by the State.

Judge STEDMAN: Yes, I see, that's over on the next page. Now, Judge Penn, they read this here. Here is a question and part of

the answer to which was introduced by the State, and we desire the remainder of the answer.

Q. Now, Mr. Pierce, will you please explain the relations between the Waters-Pierce Oil Company and the Standard Oil Company of New Jersey, and, in order that you may be brief, if you have prepared a memoranda shortly detailing that, I will say that you may refer to that memoranda and read it.

Judge PENN: Well, hadn't I better read all the answer, so the jury will understand?

Judge STEDMAN: I think so.

A. I have a memoranda answering that question, which I will read. During the Fall and Winter of 1877 and 1878, I organized, under the laws of the State of Missouri, the first Waters-Pierce Oil Company, which succeeded to the business of Waters, Pierce
838 & Company. The original capital was one hundred thousand dollars, of which amount Waters, Pierce & Company subscribed for forty per cent.; Horace A. Hutchins and William P. Thompson, of Cleveland, Ohio, subscribed for forty per cent., and Chess, Carley & Company, of Louisville, Ky., subscribed for twenty per cent. The first officers of the first Waters-Pierce Oil Company were William H. Waters, Director and President; H. Clay Pierce, Director and Vice President; Charles M. Adams, Secretary and Treasurer; Horace A. Hutchins, Director; William P. Thompson, Director, and Francis D. Carley, Director. Some time after the organization of the first Waters-Pierce Oil Company the forty per cent. belonging to Hutchins and Thompson and the twenty per cent. belonging to Chess, Carley & Company was transferred to the Trustees of the Standard Oil Trust, and I purchased the interest of William H. Waters in the forty per cent. belonging to Waters, Pierce & Company. So that when, on May 29th, 1900, the first Waters-Pierce Oil Company was liquidated the assets were distributed in these proportions.

Judge PENN: That's the portion of the answer read by the State. The balance is as follows:

When the Standard Oil Trust was organized I was urged to place the Waters-Pierce Oil Company in the trust, but refused to do so, and even after the forty per cent. of the capital stock of the Waters-Pierce Oil Company issued to Hutchins and Thompson and the twenty per cent. issued to Chess, Carley & Company had been placed in the trust by the Standard Oil Company of Ohio, to whom it had been transferred, I still refused to place my stock in the trust. Wher the first Waters-Pierce Oil Company was organized it was agreed by all parties interested that I should control and direct its policy.

Judge STEDMAN: Now, get down to the next "A".

A. Its policy and operations, and this I constantly continued to do from the date of its organization until February, 1900, when protracted ill health compelled me to absent myself from St.
839 Louis, and I retired as president of the company and elected my brother-in-law, Mr. Andrew M. Finlay, my successor.

Mr. ALLEN: Now, we object to the remainder of the answer, because the examination shows that it is hearsay—that he learned it from Mr. John D. Johnson, his attorney.

The COURT: Give the portion of the testimony which you say shows that it is hearsay.

Mr. ALLEN: Well, it is away over at the other side. Counsel I suppose will agree that that is a fact, that it is developed further on by interrogatories of Mr. Hadley that whatever information he had about it he got from Mr. J. D. Johnson.

Judge PENN: I don't know whether it is or not.

Mr. ALLEN: Well, I will find it if the Court will indulge me.

Judge PENN: We will not offer that sentence, Mr. Allen. We don't consider it of any importance and don't want to take up time unnecessarily.

Q. Now, Mr. Pierce, that relates to the old Waters-Pierce Oil Company. Now, state about the relations between the Standard Oil Company and the present Waters-Pierce Oil Company.

A. I have that in memoranda, Mr. Priest, and if you please, I will read from my memoranda.

"COMMISSIONER: Mr. Pierce, one question. You are giving that as your testimony?"

A. I am.

"COMMISSIONER: Proceed."

A. It simply refreshes my memory. When the license of the first Waters-Pierce Oil Company to do business in Texas was revoked, and I sought to settle with the State, so that we could continue our business there, I was told very frankly by a prominent citizen of Texas that the people of that State would not tolerate the methods of the Standard Oil Company, and that no corporation controlled
840 by that company would be permitted to carry on business in Texas. I explained this situation fully to the Executive Committee of the Standard Oil Company, and they agreed that I should organize a new company, the stock of which I should hold, and that I should manage and control the company absolutely free from any dictation or direction of the Standard Oil Company.

Judge PENN: That's the portion the State read. Now, we read the balance:

This was done, and in order that the company should conduct its business in strict accordance with the laws of every State in which it was operating, I placed the attorney of the company on the Executive Committee, with instructions to examine all reports and transactions to the end that no law should be violated. I earnestly desired the company to respect and obey the laws.

Judge STEDMAN: Now, after the discussion between the attorneys get the next answer.

Judge PENN: Now, here is the portion that the State offered, but we will have to read it to make it clear to the jury.

A. Up to the Spring of 1904 the Standard Oil Company made no attempt to interfere in any way with my management and control of the Waters-Pierce Oil Company, but at that time they transferred

the stock which had stood in my name to Mr. M. M. Van Beuren, and began in other ways to assume a control over the affairs and operations of the company. I protested against this conduct as a violation of their agreement with me, and as contrary to the representations which I had made to the people of Texas.

Judge PENN: The State read that portion. We now read the balance:

After frequent interviews and discussions on this point, the management and control of the company were again committed to my direction, and my son, Clay Arthur Pierce, is now President
841 of the company, and conducting it as an independent business.

Judge STEDMAN: Now, Judge, turn over two or three pages.

Judge PENN: "How many gallons to the barrel?"

Judge STEDMAN: Yes, sir, that's it.

Judge PENN: Beginning with the question, "Was there during all of this time and source."

Q. Was there during all of this time any source, other than those of the Standard Oil Company of New Jersey, from which you could obtain the merchandise to supply the market demand in the Waters-Pierce Oil Company's territory?

A. You are referring to the present Waters-Pierce Oil Company, Judge?

Q. Yes, sir, the present Waters-Pierce Oil Company.

A. There was not. The volume was so great that it would have been impossible for us to obtain a sufficient quantity to meet the requirements of our territory from any other source.

Q. Could you do so now, Mr. Pierce?

A. I feel quite sure that we could not. There have been many new industries, refineries in new localities, where crude petroleum has been produced, but without very careful investigation, my opinion is that we could not from all sources combined.

Q. Does the Waters-Pierce Oil Company own, or is it interested, directly or indirectly, in any oil producing property or oil wells in the United States?

A. The Waters-Pierce Oil Company does not own, and is not interested, and never has been, in any oil wells or oil-producing property within the United States.

Judge STEDMAN: Now, over on the next page.

Q. And the present business of the present Waters-Pierce Oil Company is the result of your management all of that period?

Mr. ALLEN: Now, we object to that as calling for the opinion and conclusion of the witness merely, and it is not material or relevant.

842 Judge PENN: The answer does not state a conclusion.

The COURT: The objection is sustained to the last clause of the answer. As to the rest, it is overruled.

Mr. ALLEN: The last sentence?

The COURT: "Honestly believe."

Judge STEDMAN: To which we except.

A. I have managed the business of the various interests, commencing with W. H. Cobb & Company, H. C. Pierce & Company, Waters, Pierce & Company, the Waters-Pierce Oil Company organized in 1878, and the Waters-Pierce Oil Company organized in the year 1900, down to the present time, with the exception of a short interval.

Judge STEDMAN: Now, go over three pages, over on the fourth page.

Q. Do you know after the Spring of 1900, when the new Waters-Pierce Oil Company was organized, how its affairs and policies were managed?

A. I do.

Q. By whom?

A. By the officers and the directors and the Executive Committee, composed of the officers and directors and some of the heads of departments.

Q. Do you know who constituted the Executive Committee of the Waters-Pierce Oil Company?

A. Myself; Mr. Finlay, the Vice President; Mr. Adams, the Treasurer; Mr. Gruet, the Secretary; Mr. John D. Johnson, the General Counsel; Mr. Stephen Johnson, Manager of the Lubricating Department; Mr. Charles P. Ackert, General Manager of the Company. There may have been one or two more, but those are the names I now recall.

Q. Now, I will ask you, Mr. Pierce, whether the present Waters-Pierce Oil Company ever had any understanding or made any agreement, expressed or implied, with either the Republic Oil Company, the Standard Oil Company of Indiana, or any other company or person in the State of Missouri, or elsewhere, for the purpose
843 of fixing or intending to fix or maintain the price at which any of the products of petroleum should be sold upon the market?

A. Absolutely it did not.

Q. And has not, to your knowledge, down to the present time?

A. To my knowledge, and I know generally and particularly in regard to the affairs of the Waters-Pierce Oil Company, it has not down to the present time.

Judge STEDMAN: Now, over on the next page.

Q. I believe you stated this morning that the Standard Oil Company was the only source from which you could get, in your opinion, a supply adequate to the demands in the territory in which the Waters-Pierce Oil Company were operating?

A. I am very sure that the Waters-Pierce Oil Company could not have obtained more than a very small percentage of its total output from other sources than the Standard Oil Company of New Jersey and Indiana and their allied interests.

Q. Now, Mr. Pierce, I want you to describe in a general way the equipment employed by the Waters-Pierce Oil Company in merchandising the oil sold in Missouri and the territory in which it

operates outside of the Republic of Mexico, and by this I mean the tank stations and wagons, and so forth, the material equipment.

A. Prior to the organization of the first Waters-Pierce Oil Company, and when I was conducting the business under the firm name of H. C. Pierce & Company, and Waters, Pierce & Company, I commenced introducing and locating stations at various points upon the lines of railways, rivers and water courses within the territory where I was conducting business. So that when the first Waters-Pierce Oil Company was organized the firm of Waters, Pierce & Company had stations generally throughout the entire territory in which the present Waters-Pierce Oil Company now operates. Those stations consisted either of lands owned or leased, warehouses
844 owned, stationary storage tanks and other arrangements for the storage of oils; tank lines for the transportation of oils between St. Louis, or other initial point of shipment, to the stations; tank wagons in which to locally distribute the oil, and iron barrels and smaller metal receptacles for the transportation and delivery of oils within a radius of, say, less than one hundred miles from each distributing station. Those appliances have been increased practically upon the same lines since the organization of the first Waters-Pierce Oil Company to meet the growth of the business until, when the present Waters-Pierce Oil Company was organized and at the present time, the lands and stations, transportation facilities and delivery facilities have been for many years and now are equal to supplying the entire demands for petroleum products of all kinds within the territory in which the Waters-Pierce Oil Company transacts its business.

Q. Take, Mr. Pierce, as an illustration, do you know what the material equipment for the marketing of oil by the Waters-Pierce Oil Company in the City of St. Louis is?

A. The value, Judge Priest?

Q. No, I want you to describe it and the quantity of it, if you can.

A. As the firm of H. C. Pierce & Company I owned the block of ground between Thirteenth and Fourteenth street- and Gratiot and Austin streets, in St. Louis, and at the time of the organization of the first Waters-Pierce Oil Company the ground was covered and equipped with storage, handling, manufacturing and shipping appliances.

Q. Of what did they consist?

A. They consisted of iron storage tanks, brick buildings, machinery for the manufacture of tin cans for receiving, storing and shipping oil; the manufacture of iron barrels for similar purposes; the manufacture of wooden barrels; the manufacture of wooden cases, to receive and ship the tin cans; the manufacture of tank wagons for the local distribution of oils and machinery for
845 the manufacture of axle grease; for the manufacture and compounding of all kinds of lubricating oils, and machinery, appliances, and facilities for receiving, storing, handling and manufacturing and shipping practically all articles which the Waters-Pierce Oil Company handled to the extent that business was trans-

acted in and from St. Louis. Similar facilities, according to the requirements of the different headquarters and stations throughout the territory, also existed.

Q. In other words, wherever the trade demanded you established these facilities for the economical handling for the merchants?

A. Originally the shipment started from St. Louis or came in by the Gulf of Mexico at Galveston. Later as the business developed, stations were established at the larger cities in all of the territory until many years ago these stations and facilities were established at all points where there were railway or water facilities and where there were none the goods were delivered to the merchants in the small towns and to the people in the country through means of iron barrels, tin cans and tank wagons.

Q. Then, I understand you, whenever a railroad was newly extended into a territory you followed them up by establishing stationary tanks, and you are the first person who established a system of delivery in tank wagons and those iron barrels?

A. Commencing in 1869, I personally and most of the time accompanied shipments from St. Louis radiating within the territory within which the present Waters-Pierce Oil Company now operates, located stations, attended personally to the construction, the selection of agents and the basis of sales and the organization of the local business, and as the railroads extended throughout the territory of which I am speaking, until stations were established at all points upon all railways and all water courses within that territory, and I personally attended to the shipping of those stations, or rather I was the first person to invent and have manufactured and
846 put into use tank wagons for the distribution of oil by having the horses haul the wagons; also the first iron barrels that were ever used in this country, and the appliances that I speak of were first used by myself, representing the various firms with which I have been connected in the oil business, and within the territory now occupied by the Waters-Pierce Oil Company, long before those appliances were ever handled by any one else in this country.

Judge STEDMAN: Now, down lower.

Q. You confined yourself to establishing the facilities and preparing yourself to meet the enlarged demand within that territory?

A. Absolutely, and in keeping ahead of the demands, to the end that all requirements should be promptly met, because I knew that otherwise I would not be able to control the trade.

Q. Reverting back to the plant at St. Louis. As an adjunct to that plant and for the purpose of economizing in the cost of your oil did you establish a station in East St. Louis?

A. I did.

Q. And a pipe line under the Mississippi River at St. Louis?

A. I did, to avoid the cost of transporting the oil purchased from points East of the Mississippi River over the bridge to various points across the river, I established a large storage station in East St. Louis and located several pipe lines under the Mississippi River, so that during the past twenty or twenty-five years practically all of the oils received from points East of the Mississippi River at East

St. Louis have been received in East St. Louis by the Waters-Pierce Oil Company, turned into its stationary tanks located there and pumped through pipe lines under the Mississippi River into the tanks belonging to the Waters-Pierce Oil Company located upon its lands at Thirteenth and Austin streets.

Q. Now, Mr. Pierce, will you give me approximately the
847 value of the equipment and plants of the Waters-Pierce Oil Company?

A. I have not recently examined the books, but I should say in the neighborhood of five million of dollars.

Q. That has relation to your storage tanks and your equipment to serve the conveniences of the sale of petroleum?

A. Entirely so.

Q. Do you remember the cost to the user of illuminating oil when you first began in the oil business?

A. I have sold a great deal of illuminating oil of the ordinary quality in this city at one dollar per gallon, and a great deal more at forty cents later on.

Q. Within the past few years the price of oil has been on an average—I speak of the price to the consumer—of about how much per gallon?

A. I have sold a great deal of oil in the City of St. Louis within the past few years at four and one-half and five cents per gallon delivered into their cans or receptacles from tank wagons.

Q. The price of oil varies, speaking with respect of from week to week, to the cost of production and refining?

A. The price of refined oils, gasolines and lubricating oils of the various qualities is controlled almost entirely by the price of crude petroleum, and the latter is controlled very largely by the location of production as related to the point of manufacture; for instance, when there was a large supply of crude petroleum produced in Pennsylvania and other parts of the United States, the cost of refined products delivered in the territory within which the Waters-Pierce Oil Company operated was based not only upon the value of the crude and the cost of manufacture, but to a very large extent to the cost of transportation, which then was perhaps the larger part of the total cost, and later when a large production of crude petroleum was obtained in Ohio and Indiana and the Standard Oil Company established a manufactory at Whiting, near Chicago, the cost of
848 the refined products delivered to the Waters-Pierce Oil Company in the territory within which the Waters-Pierce Oil Company operated was very much lessened because of the less cost of transportation from the point of production of the crude and manufacture of the products to the territory within which it was sold, and so when a large production of crude petroleum was produced in Texas there were no manufactories within any reasonable distance from the point of production of the crude, and the quality of the crude being of much less value for manufacturing purposes than the production of Pennsylvania, Ohio and Indiana crude, likewise affected the cost of the refined products. The proximity of the crude product and the manufacturing plant to the territory within which the manufac-

tured products were sold was very often, as in the case of the Texas production, entirely overcome by the reduced value of the Texas production as compared with the Pennsylvania, Ohio and Indiana production, and so it has continued as to the crude petroleum in Kansas, the Indian Territory and Oklahoma. So that the price of the refined product to the consumer depends upon a great many elements, as I have illustrated.

Q. The Waters-Pierce Oil Company has never acquired nor attempted to acquire any oil fields or engage in the production or manufacture of oil, except as an incident to its business as a merchant in oils?

A. The Waters-Pierce Oil Company has never acquired, nor attempted to acquire, any fields for the production of crude petroleum, or wherein crude petroleum was produced, and has engaged in the manufacture of petroleum products from crude petroleum purchased only to the extent of the requirements of the Waters-Pierce Oil Company's business.

Judge STEDMAN: Now, turn over to the next page.
Judge PENN: I have it.

Q. Now, at present you get some oil from the Standard Oil Company's refinery at Whiting, Indiana, and at Sugar Creek, Missouri, do you not?

849 A. At the present time the Waters-Pierce Oil Company purchases of the Standard Oil Company petroleum products which are shipped to it from Whiting, Indiana, and Sugar Creek, Missouri.

Q. When was the refinery of the Standard Oil Company of Indiana erected at Sugar Creek?

A. I do not recall the exact time, but I should say about three years ago.

Q. What, if you know, is the capacity of that refinery—is it large or small?

A. Comparatively large.

Q. Now, what would be the effect of establishing that refinery at Sugar Creek upon the price of oil in the Southwest territory—would it lower or increase the price?

A. It would lower it to the extent of less freights from Sugar Creek than from Whiting. The selling price of the refined products should be lessened to the extent of the inferior quality of the crude used at Sugar Creek as compared with the better quality of the crude used at Whiting, the selling price should be correspondingly greater.

Q. In other words, when you establish a manufactory in the locality of distributing the finished product of the factory and in the neighborhood of the raw material the tendency is, as in this case, to reduce the cost of the product to the consumer?

A. It is so unless the quality of the crude is of so much less value as to offset the less cost of transportation and manufacturing.

Q. Transportation in that instance, as in all other instances, is an important factor in determining price?

A. Absolutely.

Q. Do you know whether the oils produced in Kansas are refined or are as good oils as produced elsewhere?

A. It is my understanding they are not. They are much inferior to the oils from which the Whiting products are manufactured.

850 Q. Now, Mr. Pierce, you have spoken of a great number of facilities for merchandising this oil. What advantage do you derive as a merchant from the equipment, and what is the advantage to the consumer from the establishment of such facilities?

A. The advantage to the Waters-Pierce Oil Company is the regular control of the trade adjacent to the stations. The advantage to the consumer is a saving equal to a very large percentage of the total cost in almost entire absence of leakage, insurance, storage and other similar expenses. The introduction of tank cars as a means of transporting refined products, particularly those of lighter gravity, such as gasolines, amounts in a saving in evaporation alone to as much as fifty and seventy-five per cent. of the total contents, dependent upon the distance to be transported. The introduction of iron barrels for the delivery of refined products from Waters-Pierce Oil Company's stations to territory within a distance, say, of thirty or forty miles, where formerly the wooden packages in which the transportation was effected were held in storage until the merchant sold by the gallon, or in less measure, the contents of the barrel, is equal to from ten to sixty per cent. of the contents of the package, and a greater per cent. of saving accrues to the consumer when receiving the exact number of gallons or the exact measure purchased from a tank wagon directly into the house receptacles. In the City of St. Louis there are some three or four thousand retail merchants who formerly purchased all of the oils which they sold at retail to their customers in wooden barrels from the Waters-Pierce Company, or its predecessors, or its competitors in this city, or imported it from far away points, and a fair average of the leakage during such time, say, one barrel of fifty gallons of refined oil or gasoline, remained in the retail grocer's store was very often equal to fifty per cent. of the contents or twenty-five out of the fifty gallons. Since the introduction of tank wagons de-

liveries from our storage tanks, in our works in St. Louis, not

851 one drop need be wasted. So that the advantages are very great, not only to the dealers and handlers, but to the consumers.

Q. I understand you, then, there is in the ordinary mode of shipment a very great shrinkage in the quantity placed originally in the package to be shipped?

A. When that package is not a metal one. Metal packages entirely do away with shrinkage and evaporation.

Q. Do you know of any of your competitors in the territory of Missouri—and when I say in the territory of Missouri I mean the territory in which you operate—that are equipped as the Waters-Pierce Oil Company is equipped for supplying its trade?

A. None there are or have ever been.

Q. Now, to what do you attribute this large percentage in the volume of oil sold by the Waters-Pierce Oil Company in its Missouri territory?

A. Entirely to the better facilities afforded by the Waters-Pierce Oil Company to the consumer than competitors could furnish, and to very close attention to the prompt delivery of the best qualities and full measures of oil.

Q. Has the Waters-Pierce Oil Company adopted any trade marks in oil?

A. The Waters-Pierce Oil Company received from the firm of Waters, Pierce & Company, and that firm received from the firm of H. C. Pierce & Company, and that firm from W. H. Cobb & Company, and that firm from J. R. Finlay & Company, the originators in Europe and in this country, and trade markers here, several trade mark brands which the Waters-Pierce Oil Company, first and second, have always used and still use.

Q. What is your trade mark brand of best oil?

A. Eupion.

Q. Is that manufactured for your company by the Standard Oil Company?

A. It is in this country, in the United States I mean.

Q. In Mexico it is manufactured by whom?

A. It is manufactured by the Waters-Pierce Oil Company itself.

852 Q. Can you estimate the number of gallons of Eupion oil sold by the Waters-Pierce Oil Company annually?

A. I have not the figures at hand. I know that because of maintaining a uniform excellence of oil sold under that brand that the percentage of Eupion to other brands of refined oil materially increased each year, and I assume that it is now doing so. I believe that in some instances, perhaps at many points, the sales under the Eupion brand exceed the sales under all other brands.

Q. When the present Waters-Pierce Oil Company, the defendant in this suit, was organized, I understood you to say that it succeeded by purchase to the plant of the old Waters-Pierce Oil Company?

A. It did.

Q. And it has since then confined its operations to building up its business in that territory with the plants that it acquired from the old Waters-Pierce Oil Company?

A. It has.

Q. I will ask you whether there has been any understanding expressed or whether the matter has been discussed with respect to the division of territory since that?

A. I have not discussed the question of division of territory with any one since the present Waters-Pierce Oil Company was organized, nor do I know that any other officer or representative of the Waters-Pierce Oil Company has done so with any one.

Q. Now, Mr. Pierce, I will get you to state approximately your estimate of the value of the assets and good will of the Waters-Pierce Oil Company?

A. I should say a fair value is from forty-five to fifty-five millions of dollars.

Q. What is the total amount of stock of the Waters-Pierce Oil Company?

A. Four thousand shares.

Q. What is the par value?

853 A. One hundred dollars per share. Four hundred thousand dollars.

Q. What proportion of that stock do you own?

A. Thirty-one and one-half per cent.

Q. Now, what, in your opinion, is the value of the assets, tangible assets, as distinguished from the good will of the Waters-Pierce Oil Company?

A. I have not examined the books lately or a statement. I think in the neighborhood of twelve millions of dollars.

Q. In addition to the tangible assets you estimated good will. Mr. Pierce, what are the trade marks, what articles have they in trade marks, the Waters-Pierce Oil Company in trade marks?

A. The number?

Q. Yes sir.

A. Trade marks upon all kinds of refined oils, lubricating oils, great number of those; greases and other products that the Waters-Pierce Oil Company handles.

Q. Mr. Pierce, my memory may be at fault, my associates think it is, and conceding for the present that it is, I want to ask you, if I have not already done so, whether there has ever been any combination, confederation, understanding, expressed or implied, between the Waters-Pierce Oil Company, or the Republic Oil Company, or the Standard Oil Company of Indiana, with respect to fixing or maintaining within the State of Missouri, or elsewhere, the prices of the manufactured products of petroleum, or with respect to the quantity of the products of petroleum that should be sold upon the markets in the State of Missouri?

A. There has not.

Q. Or any other Standard Oil interest, Standard Oil Company of New Jersey?

A. There has never been any understanding between the

854 Waters-Pierce Oil Company and any Standard Oil Company interest in regard to any of the questions you have propounded.

Judge STEDMAN: What is the next place you have marked?

(Judge Penn indicates the next portion.)

Mr. ALLEN: Is this cross examination?

Judge PENN: Yes, sir, by Mr. Hadley. I expect it would be about the fifteenth or twentieth page of that, the first place you stopped in the cross examination.

Q. At any other time or with any other representative of the Standard Oil interest was there an agreement with you that you, a minority stockholder, should direct and control the affairs of the Waters-Pierce Oil Company?

A. Yes, sir, subsequent to that with the same and additional individuals.

Q. Well, name some of them.

A. W. H. Tilford, Silas H. Paine and the various individuals connected with the Standard Oil Company of Ohio and New Jersey, and

the various Standard Oil interests as time went on and the extension of business required.

Q. And all these gentlemen agreed that the minority interest in the Waters-Pierce Oil Company should control its operations?

A. Always.

Q. Without any supervision or control of the Standard Oil Company?

A. Absolutely.

Judge STEDMAN: Now, skip several pages.

Q. Have you known of the Standard Oil Company selling any oil to any other wholesaler or jobber in the State of Missouri?

A. Oh, yes.

Q. In the territory of the Waters-Pierce Oil Company?

A. Yes.

Q. To whom?

855 A. The Republic Oil Company and to various dealers in the city of St. Louis.

Q. What dealers in the city of St. Louis ever bought any oil of the Standard Oil Company besides the Republic Oil Company?

A. George P. Jones & Company, and I presume a great many other dealers in St. Louis.

Q. That would simply be emergency orders?

A. I think not.

Q. Name a man in the city of St. Louis who purchased oil from the Standard Oil Company other than those you have mentioned?

A. I can not answer that.

Q. Mr. Adams became connected with the Waters-Pierce Oil Company as Secretary, did he not?

A. He became connected with the company, I think, as Secretary, although I do not remember the exact time.

Q. And from that time up to the present has the Standard Oil Company, to your knowledge, had a tank station or office in St. Louis?

A. I know that it has not.

Q. Or anywhere in the territory of the Waters-Pierce Oil Company?

A. It has during all of that time maintained a tank station at East St. Louis, which is and has been since 1878 within the territory of the Waters-Pierce Oil Company.

Q. Which company has the territory of East St. Louis?

A. Waters-Pierce Oil Company.

Q. It sells the oil to the consumers there?

A. When it can.

Q. The Standard Oil Company don't sell any, does it?

A. It does.

Q. Are you a competitor of the Standard Oil Company in East St. Louis?

A. Unfortunately, yes.

856 Q. The Standard Oil Company is competing with a company in which it owns a majority of the stock, is that your statement?

A. I don't make the statement. That may be your conclusion, General.

Q. I am asking you. You are familiar with your competitors in the city of St. Louis, are you not?

A. Not personally at the present time.

Q. You were during the time you managed the business?

A. Intimately so.

Judge STEDMAN: Now, skip over a page or two.

Q. You say you get oil of the Standard Oil Company because there is no other place you can get it. Did I understand you correctly?

A. I said that the Waters-Pierce Oil Company purchased the greater part of its supplies of refined oils and petroleum products from the Standard Oil Company because during all or a greater part of the time since the first Waters-Pierce Oil Company was organized it would have been impossible for the Waters-Pierce Oil Company, the first or second one, to have obtained sufficient supplies of proper quality to meet the trade requirements of the Waters-Pierce Oil Company within the territory in which it operated.

Q. You do not know whether you could have secured the oil, or whether the Waters-Pierce Oil Company could have secured the oil, to supply the trade in its territory from the independents or not?

A. Up to within a few years, since which time the greater portion of all other refineries have been established, I did examine the statistics very thoroughly and positively know that it would not be possible for the Waters-Pierce Oil Company to have secured sufficient supplies from that source, but it will be remembered that the multiplicity of refineries has been greater since the production of crude oil commenced in Kansas, Oklahoma and Indian Territory than during the entire previous period.

Q. Why didn't you get all you could from the independent refineries?

857 A. As a rule the oils produced by the independent refineries were of very inferior quality and they were produced in such small quantities by each independent, although the aggregate was considerable, it would have made it very much more expensive for the Waters-Pierce Oil Company to have supplied its trade from a great many sources as against the one.

Judge STEDMAN: Now, skip two or three pages.

Q. What is the nearest refinery to your territory in the South-west?

A. What part of the South-west?

Q. South-west part of this State?

A. I should think Sugar Creek.

Q. Neodesha is nearer, is it not?

A. I am not positive as to the distance. It may be.

Q. You have not been actively engaged in the business?

A. I have not been at either place recently and do not recall the exact distance. I do not think there is very much difference, General.

Q. You were speaking of the equipment of the Waters-Pierce Oil Company consisting of tank stations and tank wagons. Aren't other oil companies in the city of St. Louis selling oil that have this same equipment?

A. None.

Q. Doesn't the St. Louis Oil Company have them?

A. The St. Louis Oil Company, I believe, has a station, and has an equipment.

Q. Hasn't it tank wagons?

A. It has tank wagons, but its equipment is not at all equal to those possessed by the Waters-Pierce Oil Company.

Q. It has the same kind of equipment only in smaller size?

A. I am not sure that it is the same kind or a different kind.

Q. It consists of tank stations and tank wagons?

858 A. I believe it consists of one tank station and some tank wagons.

Q. Take in the city of Springfield and Joplin, Mr. Wilhoit has tank wagons and tank stations?

A. I do not know the gentleman, or what he has there, if anything.

Q. Do you know that there are not other companies than those I have mentioned that have tank wagons and tank stations throughout the territory of the Waters-Pierce Oil Company?

A. I know that tank stations and tank wagons do exist and are operated in competition with the Waters-Pierce Oil Company at many points in the territory of the Waters-Pierce Oil Company, in fact generally throughout the territory of the Waters-Pierce Oil Company in the United States, but not in Mexico.

Q. These conditions which you say contributed to the large percentage of the business have not existed since the new company has been in existence?

A. You mean the equipment?

Q. Yes, sir.

A. They have been largely increased and improved. The difference in percentage between former years and now is due almost entirely to the discovery of crude oil in the States of Texas, Louisiana, Kansas and in the Indian Territory and Oklahoma, which has caused a starting up of a great number of small refineries, all of which endeavor to do, and do, a considerable amount of business within the territory in the United States wherever the Waters-Pierce Oil Company operates.

Q. And in the State of Missouri that has contributed to the enlargement of competition, has it?

A. The production of crude oil?

Q. Yes, sir.

A. Very largely.

Q. And these tank wagons and tank stations have grown up in the State of Missouri within the last four or five years?

859 A. I do not know to what extent they exist, but I should say, with the exception of the St. Louis Oil Company, they have grown up within the past few years since oil was discovered

near by. It was quite a different thing for a competitor to receive his supplies from Parkersburg or Cleveland, or far Eastern points, and bring it here in wooden barrels, and sustain a leakage often as great as fifty per cent, than what it is now to get his supplies from a refinery in the immediate neighborhood; and a competitor can transact business under much more favorable conditions when the source of supply is nearer the point of sales, and with the modern equipments of iron barrels for transportation and storage, than he could in former days. The Waters-Pierce Oil Company at the time it held such a large percentage of the business was practically the only oil industry in this country equipped to store, transport and handle oil in iron packages.

Q. There is Scofield, Shurmer & Teagle?

A. Scofield, Shurmer & Teagle had two and the Waters-Pierce Oil Company had hundreds.

Q. In the State of Missouri?

A. The Waters-Pierce Oil Company had hundreds of stations in Missouri of the most perfect and largest character, fully sufficient to supply the entire demand, and Scofield, Shurmer & Teagle had a small one in St. Louis and a much smaller one in Springfield.

Q. But they had the same kind of equipment?

A. No, sir. It was very inferior in every way. They were not at all equipped.

Q. Did you ever see them?

A. I saw those in St. Louis, but not in Springfield. I had a very full description of what they had, because I negotiated for the purchase of their plant there.

Q. At Springfield?

A. At Springfield, in fact purchased the plant there. Con-
860 tinuing that answer, General, if you will allow me, if the people of the State of Missouri in the territory in which the Waters-Pierce Oil Company now operates had been obliged to depend upon Scofield, Shurmer & Teagle they would have been in darkness over ninety per cent. of the time.

Q. That is your opinion?

A. That is based upon facts.

Q. The people of Missouri have never had an opportunity to test that question yet.

A. They have had the same opportunity that I had to supply them with oil.

Q. I do not understand?

A. They were free agents. So was I. They could have bought from any one they pleased. I could have sold to any one I pleased.

Q. You could have given the people of Missouri the advantage of these refineries close to the point of distribution, but you did not regard it as expedient?

A. It would have been expensive to the people of Missouri if I had, because with my limited capital, as compared with the Standard Oil Company, I could not have afforded to do so. They have been able to sell to me so that I could re-sell to them.

Judge STEDMAN: Now, the next one we don't want. I think that is all, Judge Penn.

The COURT: Are you through with that testimony, Gentlemen?
Judge STEDMAN: Just one moment until I can see.—That's all.

861 Mr. LIGHTFOOT: We next offer the deposition of Wade Hampton. I will state to the Court that a portion of this deposition is covered by an agreement and a portion of it is not, and a portion of it, also, is, to a certain extent, in conflict with the agreement, and we offer that part of the deposition, or will offer it, for the purpose of showing that at the time this deposition was given, which was in October or November of last year, that the facts now admitted show that an effort was made at that time to conceal them, and such portions as are in conflict, we offer for the purpose of showing the effort by Wade Hampton, who is charged as one of the conspirators in the petition, that he made an effort to conceal the facts which are now admitted.

Mr. ODELL: If the Court please, we object to any part of the deposition for the purpose stated by State's counsel in this case, for the reason, in the first place, that it is not shown that Wade Hampton was ever at any time in the employ of the Waters-Pierce Oil Company, or that he was an agent of the Waters-Pierce Oil Company, the defendant in this case. In the next place, we object to it for the reason that these gentlemen themselves took the deposition of the witness; he is their witness; they are not surprised at this time by any statement that he makes in the deposition, and for that reason they can't offer any answer that the witness makes in his deposition for the purpose of either contradicting or impeaching or discrediting this witness. It is wholly immaterial and irrelevant here for the purpose of any conspiracy, or the fact that he was one of the conspirators in this case. He is not a party to this suit, and the general allegation in the petition here that he was one of the conspirators would not make the deposition of the witness material or pertinent to an inquiry of that kind. In the next place, if the witness has evaded or failed to answer any question—any interrogatory that was propounded to him in the interrogatories here, it would have been proper to have made a motion to have suppressed
862 the deposition, and certainly now, by reason of some failure of the witness to answer and by reason of his failure to answer, it is not admissible here for the purpose of showing any concealment by the witness, on the part of the defendant; and we object to it for all of the reasons stated.

Mr. LIGHTFOOT: I will state that the stipulation and agreement that we made with counsel contains the provision that either party may use the deposition of Wade Hampton heretofore taken on interrogatories propounded by the State, in the trial of this case, subject to all legal objections as to competency and relevancy. Now, we don't care to offer the deposition to disprove any fact which is admitted in this case, and for that reason I make the statement that the purposes for offering that portion of his deposition which conflicts with the facts which are now admitted, is offered for the purpose of not discrediting the witness or contradicting him in any way, except to show, so far as the facts really go to show, that at that time, in October, 1906, or November, when this deposition was

taken—I believe it was in November—that the facts which are now admitted were then denied, or an effort was made to conceal them, in line and with the view to maintain the conspiracy and monopoly that had been established, and in order that it,—the elements of it,—should not be made public and become known; and as was well known, of course, this suit was pending here at that time; this was a witness who was the General Auditor of the Waters-Pierce Oil Company, of the Standard Oil Company of New York, of the Standard Oil Company of Indiana, and of the numerous other of those corporations whose offices were at 26 Broadway, New York. His office was at 26 Broadway, New York, and the deposition will disclose that he audited the books and accounts of all these corporations, and did that up until 1900, also the books and accounts of the Waters-Pierce Oil Company up until 1900; after 1900 they sent auditors who audited, out to St. Louis to audit the books and accounts of the Waters-Pierce Oil Com-
863 pany, and with instructions to put them on their pay-roll, etc. Now, that is a fact that is now admitted—that they were sent there by the Standard Oil Company of New Jersey, for the purpost of making an audit of the books and accounts of the Waters-Pierce Oil Company for the use and benefit of the Standard Oil Company of New Jersey, the admitted majority stockholder in this corporation. Now, then, last October, when the depositions of these witnesses were being taken and the State was undertaking to establish these facts, the witness Wade Hampton evaded these questions and denied that these auditors which were sent out there were sent there at the instance of the Standard Oil Company of New Jersey, but specifically said that they were sent there at the request of the Waters-Pierce Oil Company. Now, we say that it is competent to introduce his answers to those questions for the purpose of showing that he, as one of the conspirators charged in our bill, was doing his part to conceal the relationship existing between the Standard Oil Company of New Jersey and the Waters-Pierce Oil Company organized May 31, 1900, and the relations between such corporations not having been admitted until here about thirty days ago. And we offer it, as I say, for the purpose of showing that an effort was made by this co-conspirator to conceal the true relations existing between these corporations, wherever it contemplates that.

The COURT: Let me see the evidence that you offer. (Mr. Allen hands the deposition to the Court.) Do you offer this entire deposition?

Mr. LIGHTFOOT: Yes, sir; we expect to read the entire deposition, but there are some parts of the deposition not covered by this agreement; that portion of it, we take it, there could be no objection to, as it is not covered by the agreement. There are some facts testified to that are not covered by the agreement at all.

Mr. ALLEN: A part of it, of course, shows facts that are not
864 covered by this agreement.

The COURT: I understand the objection goes to the entire deposition.

Mr. ODELL: The objection goes to that part of the deposition which they state candidly to the Court is for a certain purpose. Counsel

has made a statement to the Court that there is part of the deposition that they offer for a certain purpose. Now, we object to the deposition for any purpose that State's counsel says it is offered for.

Mr. BATTS: We have indicated the point that it is offered for that purpose.

Mr. LIGHTFOOT: I suggest, if Your Honor please, that we——

The COURT: If the Court should rule at this time, the record would not show what part is offered and what is objected to.

Mr. ODELL: We have to make our objection.

The COURT: You can renew your objection when that part is offered. As it is presented now, the Court is under the necessity of reading a great deal of matter not necessary.

(Thereupon Mr. Lightfoot read the interrogatories and Mr. Brady the answers, as follows:)

Interrogatory 1. What is your name, age and residence?

Answer. Wade Hampton; Brooklyn Borough, New York City.

Interrogatory 2. If you state that your name is Wade Hampton, then state whether you have ever signed your name Wade Hampton, Jr.; if so, when did you stop signing it that way, and the reason therefore?

Answer. I signed my name Wade Hampton, Jr., until about six months after my father's death, whose name was also Wade Hampton. This was in 1900.

Interrogatory 3. What is your business?

Answer. General auditor of accounts.

Interrogatory 4. If in answer to the foregoing interroga-
865 tory you state, or if it be a fact, that your business is General Auditor of Accounts, and in charge of the traveling auditors of the Standard Oil interests, then state by whom you are employed, and how long you have been so employed?

Answer. I have been employed as general auditor by a number of corporations for something over eleven years. Each of these corporations through their board of directors appoint me general auditor each year, each separately. I couldn't give off-hand the name of all of the companies. I can give you the Standard Oil Company of New Jersey, the Standard Oil Company of New York, Atlantic Refining Company, Standard Oil Company of Indiana and others.

(Interrogatory No. 5 and answer omitted.)

Interrogatory 6. If in answer to the foregoing interrogatory you state, or if it be a fact, that your place of business is at room 800, 26 Broadway, New York City, then state how long your place of business has been located at that place.

Answer. My office has been in 26 Broadway something over eleven years. I was formerly on the fifth floor, but I am now on the eighth. I can't tell how long it has been that room. It is 800 now.

Interrogatory 7. If you have answered, or if it be a fact, that you are employed as General Auditor of Accounts, and in charge of the traveling auditors of the Standard Oil Company of New York and the Standard Oil Company of New Jersey, or the Standard Oil Company interests, please state whether or not said concerns have offices

at 26 Broadway, New York, in the same building in which you are located, and how long they have been located at that place?

Answer. The offices of the first three companies I mentioned as being general auditor of have offices in 26 Broadway. How long they have been there I can't positively say.

Interrogatory 8. Please state whether or not any other companies or corporations have their offices at 26 Broadway, in addition
866 to those already named?

Answer. Yes.

Interrogatory 9. If you have stated, or if it be a fact, that other companies or corporations have offices at 26 Broadway, please state what connection, if any, they have with the Standard Oil Company of New Jersey and the Standard Oil Company of New York?

Answer. Not having seen the record of the ownership of the various corporations mentioned, I can't answer it.

Interrogatory 10. What business is the Standard Oil Company of New York and the Standard Oil Company of New Jersey engaged in, and how long have they been engaged in such business?

Answer. Manufacture and sale of petroleum oils. I really can't state positively how long they have been engaged in business.

Interrogatory 11. If in answer to the foregoing interrogatory you have stated, or if it be a fact, that the Standard Oil Company of New Jersey and the Standard Oil Company of New York are engaged in refining and selling petroleum oil and its products, please state in what States and Territories each of said companies are engaged in said business?

Answer. I don't know.

Interrogatory 12. Please state whether or not the Standard Oil Company of New Jersey is engaged in the business of retailing oil; if so, in what States and Territories?

Answer. They are so engaged, but I can't tell the States and territory they are operating in.

Interrogatory 13. Please state whether or not the Standard Oil Company of New York is engaged in the business of retailing oil and the products of petroleum; if so, in what States and Territories does it do such business?

Answer. Same reply exactly.

Interrogatory 14. Please state whether or not the Standard
867 Oil Company of Indiana has an office at 26 Broadway, New York; if so, what officers of said company represent it at 26 Broadway, New York.

Answer. They have not any office there.

Interrogatory 15. Please state what business the Standard Oil Company of Indiana is engaged in?

Answer. Manufacture and sale of petroleum products.

Interrogatory 16. If in answer to the foregoing interrogatory you have stated, or if it be a fact, that the Standard Oil Company of Indiana is engaged in the business of refining and selling petroleum oil and its products, please state in what States and Territory it transacts such business?

Answer. I don't know.

Interrogatory 17. Please state whether or not you have, as Gen-

eral Auditor of Accounts, audited or had audited the books and accounts of the Standard Oil Company of New Jersey, the Standard Oil Company of New York, and the Standard Oil Company of Indiana?

Answer. I have.

Interrogatory 18. If you have answered, or if it be a fact, that you have audited, or had audited, the books and accounts of the corporations named in the foregoing interrogatory, you will state how long you have been engaged in attending to the auditing of said books and accounts of each one of the corporations named, and if you are still engaged in the business of attending to the auditing of their books and accounts?

Answer. Something over eleven years, and still so engaged.

Interrogatory 19. Please state whether or not you audit or have audit made of the books and accounts of any other firm, company or corporation located at 26 Broadway, New York, or is in any manner connected with the Standard Oil Company of New Jersey, or any other corporation named in Interrogatory #18?

Answer. Yes. I cause to be audited the books and ac-
868 counts of other corporations at 26 Broadway. I can't tell the connection of those companies with the Standard Oil Company of New Jersey or the other companies referred to in Interrogatory Eighteenth.

Interrogatory 20. Please state by whom you are employed to have audit made of the books and accounts of the Standard Oil Company of New Jersey, the Standard Oil Company of New York, and the Standard Oil Company of Indiana?

Answer. By the board of directors as appointed by them as general auditor of each separate corporation.

Interrogatory 21. Please state to whom you made reports of the results of audits made after you have audited, or had audited, the books and accounts of the Standard Oil Company of New York, the Standard Oil Company of Indiana, and the Standard Oil Company of New Jersey?

Answer. The original reports of the auditors are sent to some officer of the separate corporations. In some cases the vice president, treasurer or secretary of each corporation.

Interrogatory 22. State whether or not you make a report to the Standard Oil Company of New Jersey, or any of its officers, showing the results of your labors in auditing, or having audited, the books and accounts of the Standard Oil Company of New York and the Standard Oil Company of Indiana, or either?

Answer. No.

Interrogatory 23. Please state whether or not you audit or have audit made of the books and accounts of either or all of the following companies: Anglo-American Oil Company, Atlantic Refining Company, Buckeye Pipe Line Company, Eureka Pipe Line Company, Forest Oil Company, Indiana Pipe Line Company, National Transit Company, New York Transit Company, Northern Pipe Line Company, Northwestern Ohio Natural Gas Company, Ohio Oil Company, Solar Refining Company, Southern Pipe Line Company, South Penn

Oil Company, Standard Oil Company of Kentucky, Standard
869 Oil Company of Indiana (Chicago), Continental Oil Company (Denver), Standard Oil Company of Ohio, Union Tank Line Company, Waters-Pierce Oil Company of Missouri, Standard Oil Company of San Francisco, Standard Oil Company of Connecticut, Standard Oil Company of Baltimore, Vacuum Oil Company (Syracuse), Thompson & Bedford (New York), Swan & Finch (New York), Cheesebrough Manufacturing Company (New York), Galena-Signal Oil Company.

Answer. I have charge of the auditing of some of those mentioned in the list, but not all.

Interrogatory 24. Please state whether or not any or all of the companies named in the foregoing interrogatory have officers, agents or representatives at 26 Broadway, New York?

Answer. Some have, and some have not.

Interrogatory 25. Please state whether or not the books and accounts of the Waters-Pierce Oil Company of Missouri have ever been audited by you or under your direction?

Answer. Not the present organization.

Mr. Batts: Now, Your Honor, this is the question and answer with reference to which this statement was primarily made. This we do not care to introduce, because that is a fact covered by the agreement.

The Court: The last question and answer?

Mr. Batts: The last question and answer and two or three succeeding ones. I desire to call your attention specifically to what we want to limit it the introduction to. If not proper for that purpose, then we do not care to offer it at all.

The Court: Do you wish to renew the objection?

Mr. Odell: Yes, sir. (Examines deposition.) Before Your Honor rules, we would like to state our objection a little more fully.

The Court: Yes, sir. I will hear you.

Mr. Odell: We desire the record to show that if this tes-
870 timony, commencing with Direct Interrogatory No. 25 and answer thereto, and the subsequent questions and answers of this witness are offered generally, then we have no objection to the testimony; but we do object to the testimony for the purpose that the State seeks to have it limited to in this case. In the first place, it is not shown that the witness was ever at any time an agent of the defendant. Therefore, the defendant can't be bound by the testimony of the witness. In the next place, the State in this case has made this witness its own and can not now undertake, directly or indirectly, for any purpose, to impeach or contradict the witness, and whatever the stated purpose of the State may be in this case, the only effect the testimony could have would be to prejudice the witness before the jury and thereby prejudice the rights of the defendants here by and through one of the State's own witnesses. Now, it is shown that the testimony of this witness was taken some time in October. It is shown by the testimony already offered in evidence here, the testimony of H. C. Pierce, that he had made substantially the same admission that has been made in the agreement and stipu-

lation that has heretofore been offered in evidence. Now, the test with reference to this testimony is as to what issue in this case it tends to prove; if it does not tend to throw light on some issue in the case, as a matter of course the testimony is immaterial and irrelevant, in the first place. In the second place, if it has the effect of prejudicing the witness before the jury for the stated purpose, in fact of prejudicing the defendant before the jury, then a double injury is done the defendant in this case. For the purposes of the trial of this case a written statement and agreement was offered in evidence; it has been admitted here; it is not denied. Now, as a matter of course, in so far as the stipulation and agreement throws no light on this controversy, it isn't in issue. Now, what do they seek to establish here? They seek to establish by a witness who they claim has concealed or evaded some question that this agreement that
871 they have offered in evidence here is not true. It is an indirect attack, in the first place, on the stipulation and agreement that is not controverted, and it seems to us clearly that it can not become an issue here as to whether or not one of their own witnesses has concealed or has failed to state fully the truth, on the one hand, or, on the other, has failed in his knowledge of the particular facts that have been admitted. Now, are we going to be called on to discuss an issue here before the jury as to whether or not this witness had knowledge of the facts that had been admitted and are uncontroverted here? As a matter of course, it may be material to throw light on the issue in this controversy as to whether or not auditors of the Standard Oil Company in fact audited the books of this company. If that be material here, that is already admitted. Then they propose now to go further than that with this witness, and show that this witness either did not have knowledge of that fact, on the one hand, or, on the other, that he has not stated the truth fully about it; so it is immaterial and irrelevant. It is an attack on the stipulation and agreement that is uncontroverted here; it is an indirect effort to assault and attack and impeach and cloud the testimony of their own witness, and in this indirect manner we insist that it can't be done.

The COURT: One of the issues in this case is the purpose for which the Standard Oil Company sent auditors to the Waters-Pierce Oil Company and had the books of that company audited. On that issue it is admissible and relevant, it seems to me, to show that when the head auditor of the Standard Oil Company was asked in the Fall of last year whether any auditors had been sent or not, he said they had not been sent, and under the principles announced yesterday in excluding the affidavit of Mr. Pierce, I think that the evidence is admissible. The objection is overruled.

872 Mr. ODELL: We except to the ruling of the Court.

Interrogatory 26. Please state whether or not prior to May 29th, 1900, the books and accounts of the Waters-Pierce Oil Company of Missouri were audited by you or under your direction?

Answer. Their general office accounts were.

Interrogatory 27. Do you know Mr. John B. L. Hornberger? Did

you know him in July, 1899? What was his business, and by whom was he employed?

Answer. Yes, I know him. Yes. He was a traveling auditor employed by me.

Interrogatory 28. Please state whether or not you ever requested him to visit St. Louis for the purpose of auditing the books, accounts, etc., of the general office of the Waters-Pierce Oil Company?

Answer. It is very likely I did. I can't recall the circumstances.

Interrogatory 29. Please state whether or not you wrote a letter dated July 7th, 1899, to Mr. H. C. Pierce, President of the Waters-Pierce Oil Company, introducing to him Mr. John B. L. Hornberger?

Answer. I can't remember doing so now; it is probable I did, but I can't say positively.

(Interrogatory No. 30 and answer omitted.)

Interrogatory 31. Please state whether or not prior to May 29th, 1900, the reports of the audit of the books of the Waters-Pierce Oil Company were submitted to you in person?

Answer. Yes, they were submitted to me in person.

Interrogatory 32. If you have answered, or if it be a fact, that such reports were submitted to you, please state to whom you made your reports concerning said audit, and why?

Answer. I don't recall now positively who the party was. It was probably one of the directors of the Waters-Pierce Oil Company. I supposed he would probably be interested in reading the reports.

873 Interrogatory 33. How often did you audit the books of the Waters-Pierce Oil Company prior to May 29th, 1900?

Answer. Possibly once a year. I can't remember exactly.

Interrogatory 34. Do you know Mr. R. H. McNall? Did you know him prior to May 29th, 1900?

Answer. Yes.

Interrogatory 35. Do you know by whom he was employed prior to May 29th, 1900?

Answer. I think he was employed in the Pratt Works' office.

Interrogatory 36. If in answer to the foregoing interrogatory you have stated, or if it be a fact, that he was employed in the Standard Oil Company Pratt Works office, then state where said offices were located?

Answer. 26 Broadway, New York City.

Interrogatory 37. Please state what connection the "Standard Oil Company Pratt Works" sustained toward the Standard Oil Company of New Jersey, or any of the Standard Oil Interests represented at 26 Broadway?

Answer. I don't know that it had any relation to the Standard Oil Company of New Jersey. It was one of the works' offices of the Standard Oil Company of New York.

Interrogatory 38. Do you know Mr. H. M. Tilford, and how long have you known him?

Answer. Yes. About eleven and a half years.

Interrogatory 39. What position did he hold prior to May 29th, 1900?

Answer. I can't answer positively.

Interrogatory 40. What position did he hold subsequent to May 29th, 1900?

Answer. That is answered in the same way.

Interrogatory 41. Has his office been located at 26 Broad-
874 way during the time you have known him?

Answer. Yes.

Interrogatory 42. Please state whether or not Mr. H. M. Tilford was the representative of the Waters-Pierce Oil Company at 26 Broadway prior to May 29th, 1900?

Answer. I am not positive, but I think he was a director in the Waters-Pierce Oil Company at that time.

Interrogatory 43. Please state whether or not he represented the Continental Oil Company of Denver, Colorado, during that time, and if he does not represent them at this time?

Answer. I can't be positive. I can't answer positively. I think, however, he is now a director or officer of the Continental Oil Company.

Interrogatory 44. After May 29th, 1900, please state whether or not Mr. R. H. McNall acted as Commercial Agent of the Waters-Pierce Oil Company, and had his office at 26 Broadway?

Answer. I believe he did.

Interrogatory 45. Where is 75 New Street, New York, with reference to 26 Broadway?

Answer. It is the New Street entrance.

Interrogatory 46. Please state whether or not Mr. R. H. McNall's desk is in the same room with the desk of Mr. H. M. Tilford?

Answer. No, it is not.

Interrogatory 47. If you have stated, or if it be a fact, that it is, then state how long he has had his desk in that room?

Answer. It is not in the room.

Interrogatory 48. Please state whether or not Mr. H. M. Tilford's office at 26 Broadway is on that side of the building at 26 Broadway known as 75 New Street?

Answer. It is on the New Street side of the building.

Interrogatory 49. After May 29th, 1900, to whom were the
875 reports of the audit of the books and accounts of the Waters-Pierce Oil Company sent at 26 Broadway?

Answer. I am not positive, but I suppose through Mr. McNall. They were not made to me.

Interrogatory 50. Please state whether or not after the alleged reorganization of the Waters-Pierce Oil Company, May 29th, 1900, the books and accounts of the Waters-Pierce Oil Company were audited by you or under your direction, or by auditors in your employ?

Answer. They were not audited under my direction, but by auditors of mine employed by the Waters-Pierce Oil Company direct.

Interrogatory 51. Please state whether or not you directed any auditors in your employ to audit the books and accounts of the Waters-Pierce Oil Company subsequent to May 29th, 1900?

Answer. I have answered that above.

Interrogatory 52. Do you know a Mr. Conrey? Did you have any person by that name in your employ as auditor subsequent to May 29th, 1900?

Answer. Yes.

Interrogatory 53. Do you know Mr. J. P. Gruet? Did you know him February 8th, 1901? What position did he hold with the Waters-Pierce Oil Company of Missouri at that time?

Answer. Yes, I know Mr. Gruet. I think he was vice-president of the Waters-Pierce Oil Company in 1901.

(Interrogatory 54 and answer omitted.)

Interrogatory 55. If you have stated, or if it be a fact, that you wrote such a letter as that copy in interrogatory #54, then state why you sent Mr. Conrey to St. Louis to audit the books and accounts of the general office of the Waters-Pierce Oil Company, and at whose request?

Answer. I sent Mr. Conrey, if this letter is a correct copy, to be employed by the Waters-Pierce Oil Company to audit their
876 books and accounts. Just which officer or agent requested me to send auditors to work for them, I can not now recall.

Interrogatory 56. Please state why you thought it advisable that he should be considered an employé of the Waters-Pierce Oil Company?

Answer. Because he was out of my service entirely. He was under the employ and pay of the Waters-Pierce Oil Company.

Interrogatory 57. Please state what were the reasons which you thought Mr. Gruet would undoubtedly appreciate? What was the significance of that expression?

Answer. The answer above explains. I don't recall any other significance.

Interrogatory 58. Please state whether or not Mr. Hornberger and Mr. Conrey were auditors for the Standard Oil Company, or any Standard Oil Company interest, and in your employ or under your direction, during the periods in which they were sent to audit the books and accounts of the Waters-Pierce Oil Company?

Answer. Mr. Hornberger was in my pay and employ, my personal pay and employ, the time that he audited in the Waters-Pierce Oil Company offices in '99. Mr. Conrey was in the employ and pay of the Waters-Pierce Oil Company in 1900, when he audited the accounts in their office.

Interrogatory 59. Why was it necessary that Mr. Conrey be considered an employé of the Waters-Pierce Oil Company instead of in your employ?

Answer. He was performing work for the Waters-Pierce Oil Company and not for me, and he was being paid by Waters-Pierce Oil Company.

Interrogatory 60. After he finished his services with the Waters-Pierce Oil Company did he resume his services with the auditing department of the Standard Oil Company interests under your direction?

Answer. I re-employed him as a member of my force.

877 Interrogatory 61. Do you know Mr. C. W. Norman? If so, how long have you known him? Did you know him on

or about November 7th, 1902? What business was he engaged in at that time?

Answer. I have known Mr. Norman about ten years. He is one of my traveling auditors, and was so engaged on the date mentioned.

Interrogatory 62. Did you know Mr. W. H. Henderson and W. J. Higgs? What business were they engaged in in November, 1902?

Answer. Yes, I know them both. They were both traveling auditors on my staff in November, 1902.

Interrogatory 63. If you have stated, or if it be a fact, that Mr. Norman and Messrs. Henderson and Higgs were auditors in your employ during November, 1902, you will please state if they were sent to St. Louis for the purpose of auditing the books and accounts of the Waters-Pierce Oil Company?

Answer. They were sent there and employed by the Waters-Pierce Oil Company in the same manner and under the same conditions as Mr. Conrey had been.

Interrogatory 64. Did you write Mr. J. P. Gruet a letter on or about the 7th day of November, 1902, concerning Mr. C. W. Norman, W. H. Henderson and W. J. Higgs?

Answer. I don't remember. It is possible I did.

(Interrogatory 65 and answer omitted.)

Interrogatory 66. If you state, or if it be a fact, that Messrs. Norman, Henderson and Higgs were auditors employed by you, then at whose instance and for what purpose were they sent to St. Louis to audit the books and accounts of the Waters-Pierce Oil Company, and to whom did they make their reports after their labors were performed? If answer is made that reports of audit were made to H. C. Pierce, or any other Waters-Pierce Oil Company officer, I ask, was not a copy of such report also made to you?

878 Answer. They were sent by me to be employed by the Waters-Pierce Oil Company to perform similar work and under the same conditions as Mr. Conrey had been. I am not positive as to whom they reported to. Reports were not made to me.

Interrogatory 67. Please state if Messrs. Henderson, Higgs, Norman, Conrey and Hornberger ever audited the books and accounts of the Standard Oil Company of New Jersey, the Standard Oil Company of Indiana, or any other Standard Oil interest under your direction, and when?

Answer. It is very likely—I can't say when.

(Interrogatories 68, 69 and 70 and answers omitted.)

Interrogatory 71. Do you know Mr. R. B. Backus? How long have you known him, and state whether or not he was ever employed by you as an auditor? During what period of time was he employed by you, if he was so employed? Was he employed by you during the year 1903?

Answer. Yes, I know Mr. Backus. He was one of my auditing staff for a number of years. I can't remember how many years, but he was employed on my force in 1903.

Interrogatory 72. Please state whether or not he was sent by you

in November, 1903, to St. Louis to audit the books and accounts of the general offices of the Waters-Pierce Oil Company?

Answer. I can't recall the exact date he was sent by me to be employed by them. I think in 1903. For the same purpose and under the same conditions as Mr. Conrey had been.

(Interrogatory 73 and answer omitted.)

Interrogatory 74. Please state whether or not you directed Mr. Backus to report to Mr. Gruet, and that he would be employed to audit the books of the Waters-Pierce Oil Company?

Answer. Yes, to be employed by the Waters-Pierce Oil Company.

Interrogatory 75. Do you know Mr. H. H. Stein? How long have you known him? Was he engaged as an auditor in
879 your Department under your direction?

Answer. Yes. I can't recall the number of years exactly, possibly seven years. Yes, he was one of my traveling staff.

Interrogatory 76. Please state whether or not in June, 1900, he was engaged in auditing the books and accounts of the Waters-Pierce Oil Company under your direction?

Answer. I don't remember about his being there; he was not under my direction if he was.

Interrogatory 77. Please state if you have ever authorized or instructed him at any time to audit the books and accounts of the Waters-Pierce Oil Company.

Answer. I can't remember whether I ever did or not.

Interrogatory 78. Do you know and was there ever in your employ a man named G. M. Fleming? What position did he occupy? Did he audit the books and accounts of the various Standard Oil interests under your direction?

Answer. Yes, I knew him. He was one of my traveling auditors. Yes, he audited under my direction.

Interrogatory 79. Please state whether or not you remember writing a letter bearing date of December 28th, 1903, in reference to auditing the books of the Waters-Pierce Oil Company, in which Mr. Fleming was instructed to assist Mr. Backus in auditing said books?

Answer. I can't remember now whether I did or not. If I did, he was employed by the Waters-Pierce Oil Company to audit accounts under the same conditions as Mr. Backus.

(Interrogatory 80 and answer omitted.)

Interrogatory 81. Please state whether or not Mr. Fleming was sent to St. Louis by yourself or any person under your authority for the purpose of assisting Mr. Backus in auditing the books and accounts of the Waters-Pierce Oil Company?

Answer. He was probably sent under the conditions named.

880 Interrogatory 82. Did you ever have a person in your employ by the name of William Waller? Was he employed by you in the year 1903? Please state what business he was engaged in while employed by you?

Answer. Yes, he was a member of my staff as traveling auditor, and was so employed in the year 1903.

(Interrogatory 83 and answer omitted.)

Interrogatory 84. Please state whether or not Mr. Waller went to St. Louis in accordance with the advice in that letter?

Answer. I can't remember now whether he went or not. It is possible he did.

Interrogatory 85. Please state whether or not Mr. Waller ever audited any of the books and accounts of the Standard Oil Company of New Jersey, Standard Oil Company of Indiana, Kentucky, Ohio, New York, or any other Standard Oil interests under your direction.

Answer. He very likely did.

Interrogatory 86. Please state whether or not the Standard Oil Company of Indiana has an office at Decatur, Illinois?

Answer. I believe it has.

Interrogatory 87. Please state whether or not Mr. Waller had been there auditing the books of that concern under your direction at the time he was ordered to go to St. Louis?

Answer. I don't remember.

Interrogatory 88. Please state how long Mr. R. B. Backus was in your employ as a traveling auditor, if he was such?

Answer. I can't be positive as to the number of years.

Interrogatory 89. Please state when he severed his connection with your department?

Answer. I think it was in 1904.

Interrogatory 90. Please state, if you know, where he went and what business he became engaged in after he left your em-
881 ploy. What is your information upon the subject?

Answer. He resigned from my auditing staff, I understood at the time, to take a position with the Waters-Pierce Oil Company in St. Louis. Just what his official position was I don't know.

Interrogatory 91. Please state whether or not he went to St. Louis and accepted employment in the general offices of the Waters-Pierce Oil Company, and that he is still so employed by that company at this time? State fully all information in your possession upon that question.

Answer. I understood that he accepted a position with the Waters-Pierce Oil Company, as stated above, I believe in 1904. I am not positive whether he still retains his position with them or not.

Interrogatory 92. Please state whether or not you know Mr. C. T. Griggs? Was he ever in your employ as an auditor? Was he in your employ during the year 1904 as such?

Answer. Yes, Mr. Griggs was a member of my auditing staff in the year 1904.

Interrogatory 93. Please state whether or not in the month of October, 1904, he was sent to St. Louis to audit the books and accounts of the Waters-Pierce Oil Company?

Answer. My recollection is he was employed by the Waters-Pierce Oil Company in the year mentioned, for just what work I do not know, as no reports were made to me.

Interrogatory 94. Do you know Mr. D. B. Hunt? Was he ever in your employ, or under your direction as an auditor? Was he employed as such during the year 1904?

Answer. The answer will be the same exactly as that made in relation to Mr. Griggs.

Interrogatory 95. Please state whether or not in the month of October, 1904, he went to St. Louis to audit the books and accounts of the general offices of the Waters-Pierce Oil Company?

882 Answer. The answer will be just exactly the same as that referring to Mr. Griggs.

Interrogatory 96. If you have stated, or if it be a fact, that Messrs. C. T. Griggs and D. B. Hunt, or either of them, was in your employ as auditors during the year of 1904, and went to St. Louis to audit the books and accounts of the Waters-Pierce Oil Company, then state under whose instructions did they proceed there for that purpose?

Answer. I can't answer that positively, but I think they bore letters from Mr. McNall.

Mr. LIGHTFOOT: If Your Honor please, including interrogatory 97 and on, we offer that generally, because there is no stipulation covering that part of this deposition. This interrogatory 97 we offer generally.

Interrogatory 97. Please state whether or not a person by the name of Barker was ever employed in your department, and state what his duties were. Did he have his desk in your office?

Answer. Yes. He was employed as a clerk in my office. He performed various duties. Among others, it was part of his duty, prior to May, 1900, to keep the plant record of the Waters-Pierce Oil Company. His desk was in my office, but not in my room.

Interrogatory 98. Please state whether or not any reports of any character were made at any time, either before the reorganization of the Waters-Pierce Oil Company, or otherwise, by Waters-Pierce Oil Company to your department, or to Mr. Barker?

Answer. Prior to May, 1900, construction reports were sent to my office, and received and handled by Mr. Barker.

Interrogatory 99. Please state whether or not construction reports of the Waters-Pierce Oil Company were sent to your department, or to Mr. Barker in your department, for the information of the Standard Oil Company of New Jersey, or any other Standard Oil interest?

883 Answer. No.

Interrogatory 100. We copy in this interrogatory what purports to be a letter written by you under date of March 28th, 1899, as follows:—

"26 Broadway, Room 800.

Wade Hampton. NEW YORK, *March 28th*, '99.

Mr. J. P. Gruet, Sec'y Waters-Pierce Oil Co., St. Louis, Missouri.

DEAR SIR: Referring to construction reports for six months ending December 31st, 1898:

In your statements you show a transfer at Athens, Texas, from

tanks to buildings $140, which does not appear in construction reports, and which I do not understand.

Construction reports of December 31st/95, including a transfer from Corsicana to Athens of 8 x 27 tank, $340; and reports of June 30th/96, a reduction to Athens for difference in tank transferred, $140; reports of June 30th/96, also show addition to Athens of Tank, $225.55, which includes foundation, $205.00. What does the difference of $20.55 represent? What is the total amount of tanks that you make at Athens? Will you kindly advise and oblige,

Yours truly,

WADE HAMPTON, JR.
B."

Please examine the above copy and state whether or not such a letter was written by yourself, or under your direction?

Answer. Not seeing the original, I can't say anything positive in connection with the alleged letter.

Interrogatory 101. If you have stated, or if it be a face, that it was written by Mr. Barker, then state if he had authority to
884 sign your name to such a letter, and why such reports were made to you?

Answer. He had authority to correspond in relation to construction reports. The plant ledger being kept in my office by Mr. Barker caused the reports to be sent to me.

Interrogatory 102. Please state what disposition was made of the construction reports sent from the Waters-Pierce Oil Company to your department, or to Mr. Barker?

Answer. The changes in construction were noted by Mr. Barker in the plant ledger currently, no further disposition was made of the reports.

Interrogatory 103. Please state if Mr. Barker's desk was at any time moved out of your office. If so, to what office was he removed?

Answer. Yes, it was moved out of my office and to Mr. L. D. Clarke's office.

Interrogatory 104. If you have stated, or if it be a fact, that he was removed to Mr. Clark's office at 26 Broadway, please state what position Mr. Clark held at that time in connection with the Standard Oil Company of New Jersey, or any of its allied interests?

Answer. Mr. Clarke was, if I recollect correctly, the secretary, assistant secretary, or comptroller, of a number of corporations, the names of all of which I do not remember, but he was, among others, at that time comptroller of the Standard Oil Company of New Jersey.

Interrogatory 105. Please state when such transfer was made, if it was so made?

Answer. I don't remember the date.

Interrogatory 106. Please state when the construction reports of the Waters-Pierce Oil Company ceased to be made to your department?

Answer. I think after May, 1900.

Interrogatory 107. Please state whether or not during the time

Mr. Barker was under you, or in your office, if he attended to these construction reports for you?

885 Answer. The correspondence was handled in my name.

Interrogatory 108. We copy in this interrogatory what purports to be a letter written by you under date of September 8th, 1899, as follows:

"26 Broadway, Room 800.

Wade Hampton, Jr. NEW YORK, *Sept. 8th*, '99.

Mr. John P. Gruet, Sec'y Waters-Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Referring to construction reports for the six months ending June 30th, 1899, in regard to estimate D522, fire alarm box at Shreveport, La., $125.00, I understand this should be charged to expense acct.

Estimate 516, addition to warehouse at Merida, $1529.68.: Of this amt. $162 should be charged to repair acct. Was this done?

Estimate 561, rebuilding plant at Jonesboro, Ark., $2300: Of this amount $500.00 should be charged to expense acct. Was this done?

Incomplete construction report U. S. divisions.....	$2768.96
Balance sheet shows.....	3387.77
What represents the difference?.....	$618.81

Will you kindly advise me, and oblige,
Yours truly,

WADE HAMPTON, JR.
B."

Please read this letter and state whether or not it was written by you, or under your direction?

Answer. Not seeing the original, I couldn't be positive that such a letter was written.

Interrogatory 109. Please state whether or not this matter was transacted through your office?

886 Answer. Possibly.

Interrogatory 110. We copy in this interrogatory the following letter:

Construction Reports.

"ST. LOUIS, MO., *Sept. 11th*, 1899.

Mr. Wade Hampton, Jr., #26 Broadway, New York.

DEAR SIR: Replying to your favor of the 8th inst., in regard to construction reports June 30th, 1899:

Estimate D522, fire alarm box at Shreveport, La., we will transfer this amt. to expense acct. as you request.

Estimate No. 516, addition to warehouse and repairs on stable at Merida. As the repairs were not done on stable there was no expenditure on this part of the appropriation.

Estimate No. 561, warehouse and moving plant at Jonesboro, the cost of moving tanks, etc., was charged to expense acct. amounting to $58.30. Old tank foundations, pipe, etc., were charged off, amounting to $414.32, making $472.62 against the $500.00, the appropriation for new tank foundations, moving and placing tanks, etc.

The amount of $618.81 you refer to as being a difference between incomplete construction report and as shown on balance sheet covers material on hand for making iron barrels and rebuilding tank wagons. This was included in construction report, as it is on a separate account as shown on balance sheet.

Hoping that the above explanations are satisfactory, I beg to remain,

Yours truly, J. P. GRUET, *Sec'y.*"

Please read this letter and state whether or not you received such a letter from Mr. Gruet?

Answer. I couldn't state positively whether I received such
887 a letter, not seeing the original.

Interrogatory 111. Please state whether or not the balance sheet referred to in said letter was sent to your department?

Answer. Not that I know of.

Interrogatory 112. We copy in this interrogatory what purports to be a letter written by you under date of October 20th, 1899, as follows:

"26 Broadway, Room 800.

NEW YORK, *Oct.* 20, '99.

Mr. John P. Gruet, Sec'y Waters-Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I beg to advise you that we have compared your statement of plant acct. of Mexico divisions with our records, and make amt. of buildings in Central Mexico division, $46,812.91; and land of Vera Cruz Refinery, $3715.67, instead of $4715.67. Is this correct?

Will you kindly furnish me under date of Dec. 31/99, in addition to the usual recapitulations of plant acct., statement showing amount of buildings, tanks, &c., and total amt. of plant acct. of each station and subdivision, similar to statements rendered for December 31st/97?

The writer spoke to you about this matter when you were here, and was to write you so as to remind you upon your return to St. Louis. I understood it would be convenient to make the statement.

Yours truly,

WADE HAMPTON, JR.
B."

Please examine this letter and state whether or not you wrote same, or whether it was done under your authority?

Answer. I can't be positive, as I do not see the original.

Interrogatory 113. Please state whether or not you have on
888 file in your office copies of the letters which have been set out in these interrogatories? If so, will you please attach copies of same, and mark them for identification?

Answer. I have not got the copies on file.

Interrogatory 114. Do you know Mr. R. P. Tinsley? What position did he occupy at 26 Broadway prior to 1904?

Answer. He was agent for several corporations.

Interrogatory 115. If you have stated, or if it be a fact, that he was an agent, please state whether or not he was the agent of the Standard Oil Company of New York, the Atlantic Refining Company, and the Standard Oil Company of New Jersey, or what Standard Oil Company, interest or interests?

Answer. He was agent of the three companies mentioned in the question.

Interrogatory 116. Please state, if you know, whether or not he was sent to St. Louis in 1904 to take a position with the Waters-Pierce Oil Company.

Answer. I don't remember what time he went to St. Louis exactly. I heard that he was an officer of the Waters-Pierce Oil Company some time after he had left New York.

Interrogatory 117. How long did he stay in St. Louis?

Answer. I don't know.

Interrogatory 118. Please state whether or not he afterwards returned to 26 Broadway, and what position he now holds?

Answer. He did not return, as far as I know. I do not know what position he holds at present.

Interrogatory 119. Please state, if you know, who succeeded Mr. R. P. Tinsley as agent of the Standard Oil Company of New York, the Atlantic Refining Company, and the Standard Oil Company of New Jersey, or other Standard Oil Company interests, when Mr. Tinsley left New York?

Answer. H. C. Arnold.

889 Interrogatory 120. If you state, or if it be a fact, that Mr. H. C. Arnold succeeded him as such agent, please state whether he still holds that position?

Answer. I believe not.

Interrogatory 121. Please state what relation exists between the Standard Oil Company of New Jersey, the Standard Oil Company of New York, and the Atlantic Refining Company?

Answer. Not ever having had access to the records showing ownership of the three companies, I can not answer.

Interrogatory 122. Please state what other auditors in your employ have, since 1900, been sent to St. Louis to audit the books and accounts of the Waters-Pierce Oil Company, in addition to those heretofore named?

Answer. I can not remember.

Interrogatory 123. Please state, in detail, the names of each corporation, or firm, whose books and accounts are audited by the force under your direction?

Answer. It would be absolutely impossible for me to answer that off-hand.

Interrogatory 124. Please state by whom are you employed to direct the auditing of the various concerns?

Answer. By the boards of directors of the various corporations.

Interrogatory 125. Please state what relation each one of said concerns bears to the Standard Oil Company of New Jersey?

Answer. Not having had access to the records showing ownership of the various companies, I can not answer.

Interrogatory 126. Please state whether or not Mr. R. H. McNall has since June 1st, 1900, seen any reports to your department purporting to be reports received from the Waters-Pierce Oil Company?

Answer. He has seen nothing from my office.

Interrogatory 127. Please state whether or not you have
890 any stationery in your department belonging to the Waters-Pierce Oil Company on which letters are written for the Waters-Pierce Oil Company?

Answer. I have not.

(Interrogatory 128 and answer omitted.)

Interrogatory 129. Please state whether or not you send auditors to any other concern outside of the Waters-Pierce Oil Company to audit their books and accounts which is not owned or controlled by the Standard Oil Company of New Jersey or its allied interests?

Answer. Frequently—yearly.

Judge STEDMAN: Now, we would like to make a motion to strike out the answer of the witness to interrogatory 25, if offered for the purpose of showing concealment on his part. I did not think it was proper until all that testimony was read. I think that the testimony here utterly fails to establish anything of that kind. The whole matter turns upon the construction of these letters. He was asked the question, "Please state whether or not the books and accounts of the Waters-Pierce Oil Company of Missouri have ever been audited by you or under your direction?" "Not the present organization," is the answer. The witness admitted time and again that he sent people to St. Louis to examine them, to audit them. The question turns upon whether they were his employés or the Waters-Pierce Oil Company's. These letters show exactly what he intended. Now, it is possible that the jury might place a different construction upon whose employés these men were, but he says that they were employés of the Waters-Pierce Oil Company. He does not conceal anything here. It is a question of the meaning of these letters of his. He says that he did not—that is, using himself as the representative of the Standard Oil Company—audit these books. He says in other answers they were audited by those persons who were sent and whose names were placed upon the pay-roll of the Waters-Pierce Oil
891 Company. So I think there has been an unjust imputation cast upon the witness by these gentlemen in regard to this matter. I think they have placed him in an improper light. He has not concealed anything at all. It is purely a question of the construction of these letters. We move that that answer, offered for the purpose of establishing concealment, be stricken out. I do not know how far the answers went. We move to strike out all that related to that. We move to strike out every one that is offered for that purpose. There is no concealment shown at all.

Mr. LIGHTFOOT: In connection with that, we want to offer this

stipulation and these letters in evidence, in connection with the deposition we have just read.

Judge STEDMAN: I want to call Your Honor's attention to the fact that there is nothing in that stipulation that contradicts what the witness says. (Reading): "The corporation organized under the laws of the State of New Jersey, and commonly referred to as the Standard Oil Company of New Jersey, which at the time said letters were written and said letters were sent, was the owner of shares of stock of the Waters-Pierce Oil Company, had requested such information as would be revealed by an examination." They were sent. It is shown by the witness himself that he sent them.

Mr. LIGHTFOOT: The witness testified in his deposition that he sent them there to be employed by the Waters-Pierce Oil Company, at the request of the Waters-Pierce Oil Company. Now, this stipulation says they were sent there at the request of the Standard Oil Company of New Jersey, to audit the books for the purpose of securing such information from such audit as would be desirable and valuable to the Standard Oil Company of New Jersey, a majority stockholder, and we say his answers, in so far as stated in those depositions, that they were sent there at the request of the Waters-Pierce Oil Company to be employed by the Waters-Pierce Oil Company, is probably in conflict with this agreement and stipulation, and we offer them for
892 the purpose of showing the purpose on the part of the witness to conceal the true purpose for which they were sent.

The COURT: Does the deposition say the auditors were sent at the request of the Waters-Pierce Oil Company?

Mr. LIGHTFOOT: That is what he has answered in his answer.

The COURT: Turn to that answer.

Mr. LIGHTFOOT: "They were sent there and employed by the Waters-Pierce Oil Company in the same manner and under the same conditions as Mr. Conrey." "I sent Mr. Conrey, if this letter is a correct copy, to be employed by the Waters-Pierce Oil Company to audit their books and accounts. Just which officer or agent requested me to send such auditors to work for them I can not now recall." Then he says, "Because he was out of my service entirely. He was under the employ and pay of the Waters-Pierce Oil Company at that time," and the stipulation says they were sent there by him at the instance of the Standard Oil Company of New Jersey, and we desire to offer this now.

Mr. ODELL: I want to make this suggestion to Your Honor: For the purpose of this trial counsel are not attaching any importance to whether these auditors were sent by the Standard Oil Company or employed by the Waters-Pierce Oil Company. Now, to avoid taking a deposition they sit down and for the purpose of a trial make a stipulation and admission of that kind. That stipulation and admission do not tend to prove that the witness has concealed anything.

The COURT: I think it is the province of the jury to say whether there is any conflict between the evidence and the stipulation, and the objection is overruled.

Judge STEDMAN: We except.

Mr. LIGHTFOOT: We offer in evidence next the stipulation and letters attached thereto.

893 (Thereupon the stipulation, signed by counsel, was introduced in evidence, as follows):

"It is hereby stipulated and agreed for the purposes of this case only, that the letters attached hereto and marked with the initials 'J. P. L.' and 'J. D. J.', being the initials of Mr. Lightfoot, counsel for the State, and Mr. Johnson, counsel for the defendant, bear the genuine signature of Wade Hampton, said letters being generally designated as follows:

"Letter dated New York, July 7th, '99, addressed to Mr. H. C. Pierce, Pres't Waters-Pierce Oil Co., St. Louis, Missouri, and signed 'Wade Hampton, Jr.', and marked Exhibit 'A'.

"Letter dated New York, February 8, 1901, addressed to Mr. J. P. Gruet, Vice Pres. Waters-Pierce Oil Co., St. Louis, Missouri, and signed 'Wade Hampton' and marked Exhibit 'B'.

"Letter dated New York, November 7th, 1902, addressed to Mr. J. P. Gruet, Waters-Pierce Oil Co., St. Louis, Missouri, signed 'Wade Hampton' and marked Exhibit 'C'.

"Letter dated New York, November 12th, 1902, addressed to Mr. J. P. Gruet, Waters-Pierce Oil Co., St. Louis, Missouri, signed 'Wade Hampton' and marked Exhibit 'D'.

"Letter dated New York, November 24th, 1902, addressed to Mr. J. P. Gruet, V. P. Waters-Pierce Oil Co., St. Louis, Missouri, signed 'Wade Hampton' and marked Exhibit 'E'.

"Letter dated New York, November 10th, 1903, addressed to 'My dear Mr. Gruet' and signed 'Wade Hampton' and marked Exhibit 'F'.

"It is further stipulated and agreed that said letters were written and the respective persons therein mentioned were sent at the instance of the Standard Oil Company, a corporation organized under the laws of the State of New Jersey, and commonly referred to as the Standard Oil Company of New Jersey, which at the time said letters were written and said parties were sent, was the owner

894 of shares of stock of the Waters-Pierce Oil Company, and for the purpose of getting such information as would be revealed by an audit of the books and accounts of the Waters-Pierce Oil Company by the respective parties designated in the respective letters.

"It is further stipulated that the letters made an exhibit to this stipulation may be offered in evidence subject to such legal objections as may be made to them as evidence.

"It is further stipulated that either party may use the deposition of Wade Hampton heretofore taken on interrogatories propounded by the State in the trial of this cause, subject to all legal objections as to competency and relevancy, &c."

Mr. ODELL: We object to the letter of date July 7, 1899, for the reason that it antedates the incorporation of the defendant in this case and the granting of the permit to this company to do business in the State of Texas. For that reason it is immaterial and irrelevant, and does not throw any light upon any legitimate issue in this case against the defendant.

The COURT: The objection is overruled.
Mr. ODELL: We except.
(Thereupon the letters attached to said stipulation were introduced in evidence, as follows):

26 Broadway, Room 800.

Wade Hampton, Jr.

Received
July 12, 1899.
Ans. ——
By A. M. F.

Received
July 12, 1899.
Answered "
J. P. Gruet.

NEW YORK, *July 7th*, '99.

Mr. H. C. Pierce, Pres't Waters-Pierce Oil Co., St. Louis, Mo.

DEAR SIR: This letter will introduce to you our Mr. John
895 B. L. Hornberger, who visits St. Louis at my request for the purpose of auditing the books, accts. &c. of your General Office.

I will, in a short time, send him one or two auditors to assist him in the work.

Any favors extended to Mr. Hornberger will be much appreciated by

Yours truly, WADE HAMPTON, JR.

Exhibit "A".
J. P. L.
J. D. J.

26 Broadway, Room 800.

No copy taken.
Wade Hampton.

Received
Feb. 11, 1901.
Answered "
J. P. Gruet.

Transmitted
Feb. 11, 1901.
A. M. F., V. P.
To H. C. P., Pt.

NEW YORK, *Feb. 8th*, 1901.

Mr. J. P. Gruet, Vice-Pres. Waters-Pierce Oil Company, St. Louis, Mo.

DEAR SIR: Our Mr. Conrey will probably arrive at your office on Monday next, the 11th inst., to take up the audit of the books and accounts of your general office.

For reasons which you undoubtedly will appreciate, it is best that Mr. Conrey be considered an employé of your company during his

examination. Therefore kindly enter his name on your pay-roll from the date of his arrival at $191.67 per month, also kindly pay what expenses he is under from the time he left New York.

Yours truly, WADE HAMPTON.

Exhibit "B".
J. P. L.
J. D. J.

896 26 Broadway, Room 800.

No copy taken.
Wade Hampton.
Personal.

Received
Nov. 10, 1902.
Answered 10.
J. P. Gruet.

Transmitted
Nov. 10, 1902.
To A. M. F.,
V. P. & G. M.

NEW YORK, *Nov. 7th*, 1902.

Mr. J. P. Gruet, Waters-Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Our Mr. C. W. Norman bears with him a letter of introduction to you from Mr. McNall. Mr. Norman will be assisted in the work of auditing the books and accounts of the General Office of your company by our Messrs. W. H. Henderson and W. J. Higgs. I will give them letters of introduction to Mr. Norman, who in turn will introduce them to you.

Please place Mr. Norman's name on your pay-roll at the rate of $2500.00 per annum, beginning with the time he leaves his home for St. Louis, and also pay his expense bills monthly as he renders them to you.

Yours very truly, WADE HAMPTON.

Exhibit "C".
J. P. L.
J. D. J.

Transmitted Nov. 10, 1902, to C. W. A. & J. D. J.

26 Broadway, Room 800.

Wade Hampton.
Personal.

Received
Nov. 14, 1902.
Answered 26.
J. P. Gruet.

NEW YORK, *Nov. 12th*, 1902.

Mr. J. P. Gruet, Waters-Pierce Oil Co., St. Louis, Mo.

897 DEAR SIR: I beg to acknowledge receipt of your favor of 10th inst. Answering your inquiry: Please place Mr. Henderson's name on your pay-roll when he arrives in St. Louis, also

that of Mr. Higgs, treating them the same as Mr. Norman, so far as salary and expenses are concerned, during their stay in St. Louis. The full names are—

	Salary per annum.
W. H. Henderson	$1800.00
W. J. Higgs	$1800.00.

Mr. Henderson should arrive in St. Louis in a few days, but Mr. Higgs will probably not reach there for 10 days or so.

I have instructed the gentlemen named above to date their commencement with your company from the time they buy their tickets, and to include the railroad fare &c. to St. Louis in their expenses to your company.

Trusting you are in good health, and with kind regards, I remain

Yours truly, WADE HAMPTON.

Exhibit "D".
J. P. L.
J. D. J.

26 Broadway, Room 800.

Wade Hampton.

Received
Nov. 26, 1902.
Answered 26.
J. P. Gruet.

NEW YORK, *Nov. 24th*, 1902.

Mr. J. P. Gruet, V. P. Waters-Pierce Oil Co., St. Louis, Mo.

DEAR SIR: This letter will serve to introduce to you our Mr. W. J. Higgs, who visits St. Louis for the purpose of assisting Mr. 898 Norman in the auditing work. I wrote you some days ago concerning him. Please place his name on your pay-roll at the rate mentioned in my former letter.

Any courtesies extended to Mr. Higgs will be much appreciated by

Yours truly, WADE HAMPTON.

Exhibit "E".
J. P. L.
J. D. J.

26 Broadway, Room 800.

Wade Hampton.

Copy sent H. C. P.
11/14/03.
M. J. B.
Ans. Nov. 20/03.

Read at Executive Committee Meeting Nov. 13, 1903. C. A. P., Secretary.

NEW YORK, *Nov. 10th*, 1903.

MY DEAR MR. GRUET: I am sending our Mr. R. B. Backus to St. Louis to take up the audit of the books and accounts of the General

Office of W. P. O. Co. Please place his name on your pay-roll at $3,000.00 per annum, to begin with date he leaves Pittsburg for St. Louis. I have said to him also to commence his expense acct. for your company with the purchase of his railroad tickets for St. Louis, from Pittsburg.

I will send two other men to assist Mr. Backus as soon as they are relieved at other points. Mr. Backus is a very intelligent and agreeable man, and has had a great deal of experience in his line of work. I have no doubt you will be pleased with him.

Yours very truly, WADE HAMPTON.

Mr. Backus will probably be in St. Louis about the 20th inst.

W. H.

899 Notified W. H. that R. B. B. had arrived—Nov. 20/03.

Exhibit "F".
J. P. L.
J. D. J.

Court adjourned until 9.30 A. M., May 24, 1907.

FRIDAY, *May* 24, 1907.

Court opens at 9.30 A. M.

Mr. ALLEN: The plaintiff offers in evidence the deposition of MAYWOOD MAXON.

Interrogatory 1. What is your name and age? Where do you reside?

Answer. Maywood Maxon. Age 50 years. Decatur, Illinois.

Interrogatory 2. In what business have you been engaged most of your life?

Answer. Oil business.

Interrogatory 3. With whom was your first employment?

Answer. Cochran & Fearing, reorganized as Cochran, Lyman & Co.

Interrogatory 4. Was the company mentioned by you an oil company? What oil did the company sell?

Answer. Yes. Mostly Standard Oil Company oils, bought of Alex. McDonald & Co., Standard Oil Company selling agents at Cincinnati, Ohio.

Interrogatory 5. Did you know Alexander McDonald? If so, state who he was and his business connections?

Answer. Yes. First as the senior member of the firm of Alex. McDonald & Co., selling agents of the Standard Oil Company, then as president of the Consolidated Tank Line Company, then
900 as president of the Standard Oil Company of Kentucky.

Interrogatory 6. If you have said that he was a member of the executive committee of the Standard Oil Company of New Jersey, state where the office of that company was located.

Judge STEDMAN. We object to this answer to the sixth interroga-

tory, because it is hearsay. The witness shows it is based upon information derived from other people. The last part, as to where the offices are located, may or may not be hearsay. It is the first part we object to.

The COURT. The objection is sustained.

Mr. ALLEN. You do not object to the last part?

Judge STEDMAN. No, sir.

Answer. The executive office of the Standard Oil Company of New Jersey was at 26 Broadway, New York.

Interrogatory 7. If you have said that Mr. McDonald was President of the Standard Oil Company of Kentucky, state whether or not that company had a New York office, and where?

Answer. Yes, at 26 Broadway, New York.

Interrogatory 8. If you say it had no New York office, state if it had a representative in New York, and if so, state where he was located.

Answer. See seven.

Interrogatory 9. After you left Cochran-Lyman Company, where did you go, and in what business did you engage?

Answer. To Peoria, Illinois, as salesman for the Peoria Oil Tank Line Company.

Interrogatory 10. If you say you were transferred to Peoria Tank Line Company at Peoria, Illinois, state what connection Mr. McDonald had with that company?

Judge STEDMAN. We object to that answer, to the tenth, because of its immateriality and irrelevancy, showing Mr. McDonald's connection with certain concerns out of the State of Texas, and no connection shown between them and this defendant.

901

The COURT. The objection is overruled.

Judge STEDMAN. We except.

Answer. The Peoria Oil Tank Line Company was owned jointly by Alex. McDonald & Co. of Cincinnati, Ohio, and Colburn, Birks & Co. of Peoria, Illinois. Later Alex. McDonald & Co. secured the entire business.

Interrogatory 11. What oil did that company handle?

Answer. Standard Oil Company's oils.

Interrogatory 12. How long did you stay with that company, and what was your next employment?

Answer. About two years. Next employment was manager of the Iowa Tank Line Company at Davenport, Iowa.

Interrogatory 13. If you say that you were manager of the Iowa Tank Line Company, state what oil you sold as representative of that company?

Judge PENN. Now, we object to the answer of this witness to this question as being irrelevant and immaterial and relating to business wholly outside of the State of Texas.

The COURT. The objection is overruled.

Judge PENN. The defendant excepts.

Answer. Standard Oil Company's oils, except turpentine, which was supplied by the Waters-Pierce Oil Company of St. Louis, Missouri.

Interrogatory 14. State whether or not Mr. McDonald had any connection with this company?

Answer. Yes. Alex. McDonald & Co. owned the Iowa Tank Line Company. All reports and moneys being sent to them at Cincinnati, Ohio, except Union Tank Line car reports.

Interrogatory 15. What company's oil did you sell as manager of that company?

902 Answer. Standard Oil Company's, except turpentine.

Interrogatory 16. State whether or not you made any reports of the operations of that company to the Standard Oil Company at 26 Broadway, New York?

Answer. Only reports of the movement of the Union Tank Line cars to H. R. Payne, Sec., 26 Broadway.

Interrogatory 17. Did the Iowa Tank Line Company operate in the State of Missouri?

Answer. Yes, my territory included the city of Trenton, Missouri.

Interrogatory 18. Did you come in contact in that State with the Consolidated Tank Line Company?

Answer. No, they were not allowed to sell at Trenton.

Interrogatory 19. State when you first became acquainted with, or to know, the Consolidated Tank Line Company?

Answer. I first knew the Consolidated Tank Line Company at Hannibal, Missouri, in 1881, and became acquainted with it when it became the owner or successor of the Iowa Tank Line Company about 1885. Do not remember the exact date.

Interrogatory 20. If you have said that you first knew of the Consolidated Tank Line Company when it absorbed the Iowa Tank Line Company, state what connection, if any, you thereafter had with the Consolidated Tank Line Company?

Answer. I was its manager at Davenport, Iowa, until about November 25, 1887, and at Decatur, Illinois, from December 1, 1887, to January 1, 1892.

Interrogatory 21. State whether or not Mr. McDonald had any connection with the Consolidated Tank Line Company?

Answer. He was its president.

(Interrogatories 22 and 23 and answers omitted.)

Interrogatory 24. If you have said that any part of the business of the Consolidated Tank Line Company was taken over by
903 the Standard Oil Company of Kentucky, state who was president of that company?

Answer. Alexander McDonald.

Interrogatory 25. When the Consolidated Tank Line Company went into the Standard Oil Company of Kentucky and Indiana, state whether or not you continued with either branch of the business? If so, state which.

Answer. Yes, with the Standard Oil Company of Kentucky as manager and special agent at Decatur, Illinois, until December 31st,

1902, and on special duty and leave of absence until March 31st, 1904.

Interrogatory 26. If you have said that you went with the Kentucky branch of it, and was stationed in Illinois, state where your territory extended, and state whether or not it brought you in contact with the Waters-Pierce Oil Company's territory?

Answer. My territory after 1895 extended from Clinton, Illinois, on the North, to Cairo, Illinois, on the South, and came in contact with the territory of the Waters-Pierce Oil Company.

Interrogatory 27. State whether or not there was a dividing line between the territory of the Standard Oil Company of Kentucky and the Waters-Pierce Oil Company in the State of Illinois. If so, state where the line was and how you knew.

Judge PENN. We object to the introduction in evidence of this answer, on the ground that the same is irrelevant and immaterial to any issue in this case, and relates wholly to business and matters outside of the State of Texas, and prior to the organization of this company.

The COURT. The objection is overruled.

Judge PENN: The defendant excepts.

Answer. There was from Louisiana, Missouri, to Cairo, Illinois, the Waters-Pierce Oil Company having Missouri West of the Mississippi River, and the Standard Oil Company of Kentucky, Illinois East of the River, except parts of Madison and St.
904 Clair Counties, Illinois. I knew the dividing line from the official map furnished me from the general office of the Standard Oil Company of Kentucky, and was not permitted to sell oils West of the river in Missouri or in Granite City, Madison, Venice, Brooklyn, Belleville and East St. Louis, Illinois, or intermediate points between places named, they being in the Waters-Pierce Oil Company's territory in Illinois; the Standard Oil Company of Kentucky having a storage and shipping depot in East St. Louis under my jurisdiction, but no sales were permitted, all orders or inquiries being referred to the Waters-Pierce Oil Company.

Mr. LIGHTFOOT: We offer next the deposition of G. J. STEIGERWALD.

Interrogatory 1. What is your name, where do you reside and in what business are you engaged?

Answer. My name is G. J. Steigerwald; Cleveland, Ohio; I am engaged in the oil business, with The Fred G. Clark Company.

Interrogatory 2. If you say you are in the oil business, state how long you have been in that business, and state in what territory you operated.

Answer. I am not in the oil business for myself.

Interrogatory 3. What was your first connection with the oil business?

Answer. Clerk for Scofield, Shurmer & Tagle.

Interrogatory 4. If you say it was with Scofield, Shurmer & Teagle, state in what place, and for how long it continued?

Answer. At Cleveland, Ohio, from March 4th, 1891, to January, 1901.

Interrogatory 5. With what concern were you next connected?

Answer. Secretary and treasurer of the Scio Refining Company.

Interrogatory 6. If you say you were with the Scio Refining Company, state whether or not this company was connected with
905 Scofield, Shurmer & Teagle, and state how long you remained with the Scio Refining Company.

Judge STEDMAN. We object to this inquiry and to the answer for the reason that it relates to corporations not parties to this suit, and relates to transactions not occurring in the State of Texas and transactions transpiring before the alleged violation of the law in this case.

The COURT. The objection is overruled.

Judge STEDMAN. We except.

Answer. No. I remained with the Scio Refining Company from January until June 1st, 1901.

Interrogatory 7. With whom were you next connected?

Answer. With the Republic Oil Company.

Interrogatory 8. If you say you took a position with the Republic Oil Company, state where that company was located, and state what position you had with it, and what your duties were.

Answer. Cleveland, Ohio, with distributing branches through the Middle West and lake States. I was purchasing agent and traffic manager, with duties as general assistant to the vice president.

Interrogatory 9. Who was the general manager of that company?

Answer. Walter C. Teagle.

Interrogatory 10. If you say that it was W. C. Teagle, state whether or not he had been connected with the firm of Scofield, Shurmer & Teagle, and if so, in what capacity.

Answer. No, he was not one of the firm, but employed by them in a general capacity, chiefly supervising the agencies and salesmen.

Interrogatory 11. What position did he occupy with the Republic Oil Company?

Answer. He was vice president and general manager.

Interrogatory 12. When was the Republic Oil Company incorporated?

Answer. June, 1901.

906 Interrogatory 13. State what became of the property of the Scio Refining Company.

Judge STEDMAN. We object to that question, because it is immaterial and irrelevant.

The COURT. What is the materiality of this evidence?

Mr. LIGHTFOOT. The Plaintiff has alleged that a great many of these companies were consolidated with other companies, and that the——

Mr. BRADY. The next answer shows the relevancy. I did not know it was here, and it will save time. (Answer shown to the Court.)

The COURT. The objection is overruled.

Judge STEDMAN. We except.

Answer. It was sold to George B. Wilson, of New York.

Interrogatory 14. State whether or not you were familiar with the oil business throughout the Central West prior to the time of the Scio Refining Company going out of business. If so, state whether or not that company and Scofield, Shurmer & Teagle were competitors of the Standard Oil Company.

Answer. I was familiar in a general way. Yes, they were.

Interrogatory 15. What became of the refinery of the Scio Oil Company after its acquisition by the Republic Refining Company?

Judge STEDMAN. We object to that. We object to both the question and the answer, because what became of the refinery of the oil company referred to is immaterial and irrelevant in this case, and relates to a transaction between parties between whom and this defendant no connection is shown.

The COURT. The objection is overruled.

Judge STEDMAN. The defendant excepts.

Answer. George B. Wilson bought it for The Republic Oil Company, and it was dismantled in the Fall of 1901.

Interrogatory 16. What became of the unfinished products of the Cleveland Refining Company and Scofield, Shurmer &
907 Teagle works at Cleveland, and if you say that arrangements were made with Mr. Cole for the transfer of these products to the Standard Oil Company's works at Cleveland, state what position Mr. Cole at that time occupied.

Judge STEDMAN. We object to both the question and the answer because the matter inquired about and the answer are both immaterial and irrelevant; and further, because the question relates to transactions and persons between whom and this defendant no connection is established.

The COURT. The objection is overruled.

Judge STEDMAN. We except.

Answer. They were carded to H. E. Cole, Standard Oil Company's switch. I don't know that he had the title of assistant to the vice president of the Standard Oil Company of Ohio, but his duties were such.

Interrogatory 17. Do you know what Mr. Cole is doing now and where he is? If so, state.

Answer. No, I do not know what he is doing or where he is located at present. Since testifying at St. Louis in February, 1906, I have learned that Mr. Cole resigned and severed his connection with the Waters-Pierce Oil Company as assistant manager in charge of sales for said company in Mexico.

Interrogatory 18. How long did you continue with the Republic Oil Company?

Answer. From June, 1901, until April 15th, 1904.

Interrogatory 19. How long did Walter Teagle continue with the Republic Oil Company at Cleveland, and what position did he occupy during that time?

Answer. From June, 1901, until the first of October, 1903; he may have surrendered the title about September 1st of that year, this title being vice president and general manager.

908 Interrogatory 20. If you have said that he left Cleveland, or if it be the case, state where he went, and in what business he became engaged upon leaving Cleveland?

Answer. He left Cleveland in October, 1903, and was subsequently connected with the Standard Oil Company of New York, being a member of their export trade committee.

Interrogatory 21. If you have stated that he went to New York and became connected with the Standard Oil Company at 26 Broadway, or if it be a fact, state what *was* his position there was and is.

Answer. I have answered part of this in the previous interrogatory. His offices were located at 26 Broadway. His position was a member of the foreign and export trade committee, and, as far as I know, he has continually filled this position, and is still so employed.

Interrogatory 22. If you have said that he became a member of the Export Trade Committee of the Standard Oil Company of New Jersey, or the Standard Oil Company's interests located at 26 Broadway, state who and what was the Export Trade Committee.

Answer. The Export Trade Committee consisted of a number of men in charge of the foreign trade of the Standard Oil Company, including practically the entire globe outside of North America.

Interrogatory 23. While the Cleveland Refining Company, the Scio Refining Company and Scofield, Shurmer & Teagle were in existence and in business, state what territory they sold oil in and state whether or not they sold oil in the State of Texas.

Answer. The territory comprised practically the entire United States and parts of Canada, including the State of Texas.

Interrogatory 24. State whether or not within the territory mentioned the firm of Scofield, Shurmer & Teagle were comparatively large dealers and sellers of oil, and state whether or not they were in competition with the Standard Oil Company and the

909 Waters-Pierce Oil Company, and state the character of the competition between them.

Answer. In proportion of total sales I should say not very large dealers in the State of Texas, but in the States of Ohio, Michigan, Indiana, Missouri, Nebraska and Iowa and adjacent territory they were the Standard's largest and most aggressive competitors, and of the Waters-Pierce Oil Company in the territory allotted to them, competing in the distribution of oil by establishing branch houses and shipping therefrom in barrels and distributing by tank wagons, the methods generally employed in handling and delivering refined and lubricating oil.

Interrogatory 25. After the Republic Oil Company took over the properties of Scofield, Shurmer & Teagle, state whether or not there was any change in the matter of competition against the Standard Oil Company and the Waters-Pierce Oil Company.

Answer. For a while three was no decided change in method, because the Republic Oil Company represented themselves as success-

ors to the firms of Scofield, Shurmer & Teagle, the Cleveland Refining Company and Scio Refining Company, and solicited the same trade supplied by these companies.

Interrogatory 26. If in answer to the preceding question you state that after the Republic Oil Company took over the business of Scofield, Shurmer & Teagle the policy of competition against the Standard Oil Company and the Waters-Pierce Oil Company was changed after about a year, or if this be the case, then state minutely and in detail just what the change was, and how you knew or became acquainted with the facts.

Judge STEDMAN. We object to this answer as irrelevant and immaterial, and further, upon the ground that the answer is not confined to a statement of facts, but is an argument of the witness, and as such is objectionable. We will also object upon the ground that this answer is based upon hearsay in part, and for that reason
910 should be excluded, and is also based in part upon correspondence which is not produced and which contains the best evidence of its contents.

The COURT. The objection is overruled.

Judge STEDMAN. We except.

Answer. After a lapse of a year or thereabouts there came an apparent change in the methods of conducting the business and more restrictions placed around the sales made by the Republic Oil Company, particularly where said sales would affect the business of the Standard Oil Company or the Waters-Pierce Oil Company. In some parts of the territory covered, the Republic Oil Company's salesmen and field managers were not allowed to sell what is known as ordinary and low grade burning oils in towns where the Standard Oil Company enjoyed exclusive tank wagon distribution facilities. In such towns and points they were told to solicit high grade burning oil trade and such lubricating trade as could be secured. These instructions and this policy were directly opposite to those pursued by the old companies, and for a while by their successor, the Republic Oil Company, who solicited all the trade in the territory regardless as to what they were buying or from whom. The Republic Oil Company aimed to supply the trade known as dissatisfied trade formerly supplied by Scofield, Shurmer & Teagle, and finally confined their greatest efforts to supplying the trade demanding goods made by independent companies, having no affiliation with the Standard Oil Company, commonly known as the Trust. This trade were prejudiced against trust methods and would buy only independent oils and demand high grade. It was understood that the field managers and salesmen for the Republic Oil Company should not make any decided and aggressive effort to secure trade away from the Standard Oil Company or its known subsidiary companies. I obtained this knowledge through oral instructions, also by correspondence that was handled and seen by me in connection with other matters directly under my supervision.

911 Interrogatory 27. If you have said in answer to the preceding questions, or if it be a fact, that the Republic Oil

Company was so managed as to secure the trade that was dissatisfied and did not want to do business with the Standard Oil Company and the Waters-Pierce Oil Company and also to supply the demands for high grade oil and that this policy was effected by instructions to agents of the company, state by whom these instructions were given, and state the circumstances under which they were given.

Judge STEDMAN. We object to the answer to that interrogatory on the ground of its immateriality and irrelevancy; and, further, we object to the answer upon the ground that the witness shows that his answer is based in part upon written instructions and in part upon what happened at the meetings which he says he attended. He does not separate the knowledge that was derived from written instructions from the information obtained at the meetings, and inasmuch as it is shown that part of the information came from written instructions, the whole is objectionable. We further object that in so far as the information is predicated upon written instructions the instructions are the best evidence of what they contain, and there is no evidence here of the source from which those instructions emanated that would connect this defendant with them.

The COURT. The objection is overruled.

Judge STEDMAN. We except.

Answer. The instructions were given to the field managers and agents by the vice president and general manager of the company, chiefly in person, to some extent by written instructions, and the general policies were discussed and outlined at periodical meetings held in the Republic Oil Company's offices at Cleveland, at which the president of the company, the vice president and general manager and all the field managers were present; practically during the entire session, and during part of the session, the secre-
912 tary and treasurer would be present, and I attended the most important parts of these sessions, so that I would understand the nature of the instructions and intent thereof to enable me to advise and act when these matters arose during the general manager's absence.

Interrogatory 28. To whom and where did the Republic Oil Company make reports as to its business, if at all?

Answer. To C. L. Nichols, at 75 New Street, New York, president of the company.

Interrogatory 29. If you have said in answer to the preceding question that the Republic Oil Company made reports to C. L. Nichols at 75 New Street, New York, state who C. L. Nichols was, and state what relation, if any, 75 New Street, New York, has to 26 Broadway, New York, and state what building had these numbers, and by whom the building was occupied.

Answer. C. L. Nichols was president of the Republic Oil Company, and 75 New Street is known as the back or New Street entrance to the Standard Oil Building at 26 Broadway, which is occupied chiefly by the Standard Oil Company and affiliated companies, including their executive managing committees and their subordinates.

Interrogatory 30. State whether or not you were ever at 26 Broadway and 75 New Street, New York, and if so, state whether or not you there met W. E. Bemis.

Answer. I have been at 26 Broadway and met W. E. Bemis on two different occasions. This also answers the question regarding 75 New Street.

Interrogatory 31. If you state you met W. E. Bemis at 26 Broadway, state who he was and what his business was.

Answer. W. E. Bemis was a member of the export or foreign trade committee of the Standard Oil Company of New York, in charge of their interests in India, China, Japan and Korea.

Interrogatory 32. What was the name of the first president of the Republic Oil Company?

913 Answer. The first president of the Republic Oil Company was George B. Wilson.

Interrogatory 33. If you have stated that the name of the first president of the Republic Oil Company was George B. Wilson, state whether or not you met a genleman by that name at 26 Broadway, and if so, state what position he had there.

Answer. I do not remember of meeting Mr. Wilson at 26 Broadway, and if I did it was at 26 Broadway.

Interrogatory 34. While you were at 26 Broadway, did you see Mr. C. L. Nichols? If so, state where he was located and in whose office.

Answer. I saw Mr. C. L. Nichols at 26 Broadway. He was located in offices occupied by L. J. Drake, Sr., at 26 Broadway.

Interrogatory 35. If in answer to the preceding question you have stated that Mr. C. L. Nichols was in the office of L. J. Drake, state who Mr. Drake was.

Answer. Mr. Drake at that time, which was in the Spring of 1904, was a member of the domestic trade committee of the Standard Oil Company.

Interrogatory 36. If in answer to the preceding question you state that Mr. Drake was a member of the domestic trade committee of the Standard Oil interests located at 26 Broadway, state what this domestic trade committee was, and of whom it was composed.

Answer. The domestic trade committee is directly in charge of the entire sales and trade department and interests of the Standard Oil Company and affiliations. Of the members constituting this committee I only recall the names of Messrs. L. J. Drake, Sr., H. G. Westcott, S. R. King, and I believe a Mr. Tilford.

Interrogatory 37. State whether or not you know of any other connection Mr. L. J. Drake had had with the Standard Oil Company or any company allied to the Standard Oil Company.

914 Answer. Prior to his connection at 26 Broadway Mr. Drake was sales manager of the Standard Oil Company of Indiana, with headquarters at Chicago.

Interrogatory 38. If in answer to the preceding questions, or if it be a fact, that Mr. Drake was general sales manager of the Standard Oil Company in Indiana, state what connection, if any, Mr. Nichols had with him when he was acting in that capacity.

Answer. I do not know that there was any connection between Messrs. Drake and Nichols while Mr. Drake was general sales manager of the Standard Oil Company of Indiana.

Interrogatory 39. What was the occasion for the visit you have referred to to New York, and if you say that it was with reference to securing another place with the Standard interests, state what, if anything, was said concerning your assignment to Cincinnati, and state what Standard concern at that place it was that it was suggested that you might be tendered a position with?

Answer. I was summoned to New York relative to a position that would be an improvement over the one I was holding at that time with the Republic Oil Company, and was tendered a position with the Standard Oil Company of New York at Bombay, India, or at Hong Kong. After considering and rejecting these, they suggested and offered to place me as an assistant to the general manager of the Standard Oil Company of Kentucky, with offices at Cincinnati, Ohio.

Interrogatory 40. When you were with the Republic Oil Company, state whether or not you got oil from Cleveland, Ohio, and if so, state to whom the orders were sent.

Answer. While with the Republic Oil Company we secured a large proportion of oils required from the Standard Oil Company of Ohio, but orders and shipping instructions were always sent to Howard E. Cole, at the Standard Oil Company's offices, 53 Euclid Avenue, Cleveland, Ohio.

915 Interrogatory 41. If you have stated that the orders were sent to H. C. Cole, state what position he occupied at that time.

Answer. Mr. Cole's duties were general assistant to the vice president of the Standard Oil Company of Ohio.

Interrogatory 42. State whether or not the Standard Oil Company owned a refinery at Cleveland at that time.

Answer. The Standard Oil Company at that time owned a refinery at Cleveland.

Interrogatory 43. From whom after the organization of the Republic Oil Company did it get its oil?

Answer. The Republic Oil Company bought some of its supplies from the independent refineries located in Pennsylvania, but chiefly from the various refineries and subsidiary companies of the Standard Oil Company, as follows: Refined oils and lubricating products from the Standard Oil Company of Ohio and works located at Cleveland; from the Solar Refining Company, of Lima, Ohio; from the Atlantic Refining Company, Eclipse Lubricating Oil Works Department of Franklin, Pennsylvania; also from the Standard Oil Company of Indiana, whose refinery is located at Whiting, Indiana.

Interrogatory 44. State whether or not there was any change in the refineries from which the Republic secured oil, and if so, state when the change took place, and state what it was.

Answer. The only change that this question would probably refer to is the one of instructions regarding the placing of orders. For a period of about two years the Republic Oil Company were privi-

leged to buy such oils as they desired in the open market, and at the most advantageous terms. These privileges were gradually withdrawn, and finally I had instructions to place all orders for all grades of refined oils, gasoline and lubricating products that were being turned out with the companies mentioned in the preceding answer.

916 Interrogatory 45. State whether or not the Republic Oil Company maintained the stations which had been established by Scofield, Shurmer & Teagle in Waters-Pierce territory.

Answer. For a while all stations formerly owned by the Cleveland Refining Company and Scofield, Shurmer & Teagle were maintained by the Republic Oil Company. When conditions were such that the Standard Oil Company could handle the entire or at least the bulk of the trade in a certain community, several of their smaller stations were closed and moved away. These stations were chiefly located in the territory of the Standard Oil Company of Indiana, and one of these at Springfield, Mo., was in the territory of the Waters-Pierce Oil Company. This particular station was closed by the instruction of the president of the Republic Oil Company, and the equipment moved to Kansas City, Missouri.

Interrogatory 46. Are you acquainted with Mr. Hardcastle? If so, state whether or not he worked for the Republic Oil Company.

Answer. I know Mr. Hardcastle, who was employed by the Republic Oil Company for some months in the capacity of stock clerk.

Interrogatory 47. State from what employment he came, and if he left the Republic, state where he then went.

Answer. Mr. Hardcastle came to the Republic Oil Company from the Standard Oil Company at Albany, New York, and after leaving the Republic Oil Company went back into the employ of the Standard Oil Company.

Interrogatory 48. Were you acquainted with Mr. Hart? If so, state his connection with the Republic Oil Company. State what connection, if any, he had thereafter with the Standard Oil Company of Indiana.

Answer. Yes, I know Mr. J. H. Hart, who came to the Republic Oil Company from the Standard Oil Company of Indiana. For several years he was chief clerk in the accounting department of the Republic Oil Company, at Cleveland, Ohio, and subsequently
917 was promoted to the position of traveling auditor for the same company. I do not know of any connection of Mr. Hart with the Standard Oil Company of Indiana after his engagement with the Republic Oil Company.

Interrogatory 49. State whether or not Mr. Hart is still connected with the Standard Oil Company, and if so, state to what work he was transferred from the Republic.

Answer. I have not seen Mr. Hart since the Republic Oil Company has dicontinued business in Ohio and other States, but understand he is now connected with the Standard Oil Company, I do not know whether it is the Standard Oil Company of Kentucky, Indiana, or New York.

Mr. LIGHTFOOT. We next offer in evidence the deposition of A. H. GARDNER, filed the 24th day of November.

Judge STEDMAN. In order to economize time and not to be making repeated objections, we make a general objection to each and all of the answers of this witness. We make the general objection that each and all of his answers relate to matters outside of the State of Texas, between companies other than the defendant in this case, and in relation to transactions with which this defendant is not shown to have any connection.

The COURT. Are they the companies alleged to be conspirators?

Mr. LIGHTFOOT. Yes, sir.

The COURT. The objection is overruled.

Judge STEDMAN. We except.

Interrogatory 1. What is your name and where do you reside? In what business are you engaged?

Answer. A. H. Gardner, Kansas City, Missouri. Oil business.

Interrogatory 2. If you reside in Kansas City, state how long you have lived there, and state where you lived prior to that time.

Answer. I lived here over fourteen years. Prior to that time Denver, Colorado.

918 Interrogatory 3. If you have said that you resided at Denver, Colorado, or if that be a fact, state what company you were connected with there, if any.

Answer. Continental Oil Company.

Interrogatory 4. If you have stated that you worked with the Continental Oil Company, state whether or not you were familiar with its business, and state where it sold oil.

Answer. Yes, I was familiar with its business. It sold oil in Colorado, New Mexico, Utah, Montana, Wyoming.

Interrogatory 5. State whether or not the Continental Oil Company was in competition with the Standard Oil Company, or did business in any territory in which the Standard Oil Company was selling oil, and state whether or not it was in competition with the Waters-Pierce Oil Company, or sold in any territory in which the Waters-Pierce Oil Company sold oil.

Answer. I don't think the Standard Oil Company came in there at all. They were represented by the Continental Oil Company. The Continental Oil Company did not come into competition with the Waters-Pierce Oil Company and did not sell in any territory in which the Waters-Pierce Oil Company sold oil.

Interrogatory 6. State whether or not the Continental Oil Company made any reports to anybody outside of Denver, and if so, state to whom?

Answer. The Continental Oil Company made reports to H. F. Tilford (I think that was his initials), 26 Broadway, New York.

Interrogatory 7. While you were with the Continental Oil Company, state whether or not the company, or you for the company, received instructions from any one outside of the State of Colorado with reference to the business of the Continental.

Answer. Yes, Mr. Tilford gave me instructions in the
919 office, and also W. T. Jordan, Vice President and Manager of — Continental Oil Company.

Interrogatory 8. If in answer to the two preceding questions you have stated that reports were made to Mr. Tilford in New York and that instructions were received from W. T. Jordan and from Mr. Tilford, both in New York, or if this be a fact, state who Mr. Tilford was and what relation he had with the business, and where his place of business was in New York, and state who Mr. Jordan was, and what relation he had with the business, and where his place of business was.

Answer. Tilford's headquarters were 26 Broadway, New York, and we considered him the representative of the Standard Oil Company. W. T. Jordan was Vice President and Manager of the Continental Oil Company. His residence was Denver, Colorado, and that was also his place of business.

Interrogatory 9. When you came to Kansas City with what oil company were you connected, if with any?

Answer. The National Oil Company.

Interrogatory 10. If you have answered that you went with the National Oil Company, state whether or not that company was in any way connected with the Standard Oil interests.

Answer. No, sir, it is not.

Interrogatory 11. When you came to Kansas City, what oil companies were doing business or selling oil in that State?

Answer. Consolidated Tank Line Company and Scofield, Shurmer & Teagle.

Interrogatory 12. State whether or not your company sold oil in competition with the Consolidated Tank Line Company.

Answer. Yes, sir.

Interrogatory 13. If you have stated that Scofield, Shurmer & Teagle were in business in Kansas City at that time, state how long they continued in business, and state what became of their business.

920 Answer. They continued in business, I should say, until about five years ago. Their business was thereafter handled by the Standard Oil Company under the name of the Republic Oil Company.

Interrogatory 14. State, if you know, who were in charge as managers of the Consolidated Tank Line Company after you came to Kansas City.

Answer. E. P. Pratt, G. W. Mayer, Ed Conklin, W. C. Crenshaw, then G. W. Mayer, back from Detroit.

Interrogatory 15. If you have stated that Mr. Crenshaw and Mr. Pratt were managers of that company during that period, state what position, if you know, Mr. Crenshaw afterwards occupied.

Answer. General Manager of the Standard Oil Company located at Chicago.

Interrogatory 16. State the method of business with reference to competition with the trade on the part of the National Oil Company, Scofield, Shurmer & Teagle and the Standard Oil Company prior to

the time that Scofield, Shurmer & Teagle was succeeded by the Republic.

Answer. We were independent companies, each one fighting for the business.

Interrogatory 17. State whether or not any change took place with reference to the matter of competition between the National and the business which had been owned by Schofield, Shurmer & Teagle and to which the Republic had succeeded and the Standard Oil Company after the Republic went into business.

Answer. The Republic was put out by the Standard as a forerunner, to secure our business, by selling at cut prices, when necessary.

Interrogatory 18. State whether or not after the Republic went into business the company represented by you and the Republic engaged in active competition, and if so, state what was done by each company, and state how the conflict was settled and who par-
921 ticipated in the negotiations, and what was said by the parties.

Judge STEDMAN. We object to that answer. We have already made a general objection covering all of these answers, but to this one we object specially because it relates exclusively to transactions in other States, and because, further, it relates to transactions between companies other than this defendant; and because, further, these companies are not parties to the suit; and because, further, this defendant is not shown to have had any connection with or knowledge of any of these transactions; and, furthermore, these transactions appear to have occurred prior to the organization of the defendant; and we object generally upon the ground of immateriality and irrelevancy.

The COURT. The objection is overruled.

Judge STEDMAN. We except.

Answer. After the Republic went into business our company was in competition with them and with the Standard. The Republic put out the city tank wagon trade to procure our business by giving of rebates, they to do the dirty work and the Standard to maintain prices, they not soliciting the Standard's trade, but wherever the Standard lost a customer they were notified (that is the Republic), and appeared the next morning on the ground. They could not hold the Standard's customer without they did it with a rebate, until we were forced to sell at a reduced price and a straight price, making it so interesting that the Standard met the prices. Then we went out to the Standard's outside stations, where they were getting about six cents more a gallon for goods, and made them a similar price, making up carloads among the grocerymen. At this stage in the game Mr. Crenshaw appeared on the scene, and promised to adjust matters. He invited me to go with him and see Teagle, the manager of the Republic, which I refused to do. I told him I knew no competitors but the Standard, and they could settle their own difficulties. He made an appointment with me at noon, and
922 stated that he had arranged matters with Teagle, and that there would be no more cutting, that the Republic would

maintain prices, that of course they had a lot of contracts out that would not expire for about a couple of months, and they would have to fulfill them. We took lunch at the Baltimore, then he wanted that I should go up to the Coates House and meet Mr. Mayer and Mr. Teagle, but Teagle thought he was not consulted, and had no voice in the matter, and if I would sit down and chat with him and smoke a cigar, possibly he would be pacified. But a week thereafter prices were restored, which was necessary, or do business at a loss.

Interrogatory 19. While you were in business at Kansas City and before the Republic acquired the business of Scofield, Shurmer & Teagle, state whether or not the last named concern had a tank station at Springfield, and state whether or not you did business at that city.

Answer. Scofield, Shurmer & Teagle had a station at Springfield. We sold goods there from here.

Interrogatory 20. State whether or not the Waters-Pierce Oil Company was selling oil there, and state whether or not the Consolidated Tank Line Company had a station at that place.

Answer. Waters-Pierce had a station there, but the Consolidated Tank Line Company did not.

Interrogatory 21. What, if anything, was done with the station established by Scofield, Shurmer & Teagle at Springfield after the acquisition of its business by the Standard Oil Company.

Answer. They withdrew; I understand they shipped their belongings to Kansas City.

Interrogatory 22. State whether or not at any point in Missouri, or elsewhere, you have at any time in the conduct of your oil business come in competition with the Waters-Pierce Oil Company and the Standard Oil Company at the same place.

Answer. We never have.

923 Mr. LIGHTFOOT: We offer now the deposition of Edward P. Pratt.

Judge STEDMAN: We should like to interpose an objection to the deposition of this witness as a whole, because each and all of his answers relate to events transpiring in other States, and because the occurrences detailed by the witness are between persons other than this defendant, and because this defendant is not shown to have had any connection or knowledge of the occurrences related by the witness, and those persons between whom the transactions are stated to have occurred are not parties to this suit; and upon the general ground of immateriality and irrelevancy.

The COURT: Does the deposition relate to transactions between co-conspirators?

Mr. BRADY: Yes, sir.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

Interrogatory 1. What is your name and where do you reside? How long have you lived at your present place of residence? Where did you live prior to coming to Kansas City, and for how long?

Answer. Edward P. Pratt, Kansas City, Missouri. Since 1892. Des Moines, Iowa. I came to Des Moines in 1882.

Interrogatory 2. If you have stated that you have lived at Des Moines, Iowa, before coming to Kansas City, state what business you were engaged in in that city, and if you say you were in the oil business, then state under what name, or for what company.

Answer. I was an officer in the Des Moines Oil Tank Line Company.

Interrogatory 3. If in answer to the preceding question you have said that you were in the oil business under the name of Des Moines Oil Tank Line, state whether or not this was an independent company.

Answer. It was.

Interrogatory 4. State what disposition was made of the Des Moines Oil Tank Line Company.

924 Answer. It was sold to the Consolidated Tank Line Company.

Interrogatory 5. If in answer to the preceding question you have stated that you sold out to the Consolidated Tank Line Company, state what connection that company had with the Standard Oil Company, and state what business you were in after the sale.

Answer. The Consolidated Tank Line Company was a part of the Standard Oil Company. I was manager of the Consolidated Tank Line Company at Des Moines, Iowa, until about March, 1892.

Interrogatory 6. State whether or not the Des Moines Oil Tank Line continued in business after you became connected with the Consolidated Tank Line Company.

Answer. I think it did for about a year.

Interrogatory 7. When you came to Kansas City, what business did you engage in?

Answer. I was manager of the Consolidated Tank Line Company.

Interrogatory 8. If in answer to the preceding question you state you were manager of the Consolidated Tank Line Company, state what territory this company did business in contiguous to Kansas City, and state how far the line of your business extended into the Southern part of Missouri.

Answer. My territory consisted of a part of the State of Kansas and a part of the State of Missouri. The division line crossing the Southern part of the State of Missouri would include the towns of Lamar, Clinton, Sedalia, Moberly, Hannibal.

(Interrogatory 9 and answer omitted.)

Interrogatory 10. If you have indicated there was a dividing line between the Waters-Pierce Oil Company and the Consolidated Tank Line Company, state whether or not the Waters-Pierce Oil Company did business in the territory of the Consolidated Tank Line Company and whether the Consolidated Tank Line Company did business in the territory of the Waters-Pierce Oil Company, and if you

925 state that neither did business in the territory of the other, state why.

Answer. No. It was according to our instructions to confine our business to what was known as our territory.

(Interrogatories 11 and 12 and answers omitted.)

Interrogatory 13. State whether or not your company at Kansas City sent any traveling men down into the territory claimed by the Waters-Pierce Oil Company, and state whether or not you knew of any competition from the Waters-Pierce Oil Company in the territory claimed by you.

Judge STEDMAN: We object to it, may it please Your Honor, because that is predicated upon the idea of the existence of a territory dividing line, and the testimony on that subject——

Mr. BRADY: We call the attention of Your Honor to the fact that it calls for the territory claimed by the Waters-Pierce Oil Company, not territory shown by a dividing line.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

Answer. No. Our company did not send any traveling men down into the territory claimed by the Waters-Pierce Oil Company, and I knew of no competition in our territory from the Waters-Pierce Oil Company.

Interrogatory 14. How long did your connection with the Consolidated Tank Line Company in Kansas City continue?

Answer. Until November, 1896.

Interrogatory 15. If you have stated that you continued with that company until November, 1896, state the circumstances under which you ceased working for that company.

Answer. I resigned my position.

Interrogatory 16. If you have stated to the last preceding question that the business of the Consolidated Tank Line Company was acquired by the Standard Oil Company, state what Standard Oil Company succeeded to it, and state whether or not you had
926 any connection with the Standard Oil Company thereafter.

Answer. The Consolidated Tank Line Company was succeeded by the Standard Oil Company of Kentucky, and afterwards by the Standard Oil Company of Indiana. I was manager respectively of each one of the companies in Kansas City, as the changes were made.

Interrogatory 17. State whether or not after the sale of your independent business to the Consolidated Tank Line Company or the Standard Oil Company you had any connection with any Standard Oil Company other than the Standard Oil Company of Kentucky, and if in answer to this you state that the Standard Oil Company of Indiana succeeded to the business of the Standard Oil Company of Kentucky and thereupon you became an employé of the Standard Oil Company of Indiana, state whether or not the territory claimed and operated in by the Standard Oil Company of Indiana was greater or less than that claimed by the Consolidated Tank Line Company, and if it was in any sense different, state what the difference was.

Answer. My territory as an employe of the Standard Oil Company of Indiana was just the same as it was of the Standard Oil Company of Kentucky and the Consolidated Tank Line Company while I was manager at Kansas City, Missouri.

Interrogatory 18. State whether or not the territory claimed and

operated in by the Standard Oil Company of Kentucky was in any sense different from that claimed and operated in by the Consolidated Tank Line Company.

Answer. No, not as far as my territory was concerned.

Interrogatory 19. State whether or not the territory primarily claimed by the Consolidated Tank Line Company and subsequently by the Standard Oil Company of Kentucky and finally by the Standard Oil Company of Indiana, or any part of it, was at any time operated in by the Waters-Pierce Oil Company, and if you say it was not, state why not.

Answer. It was not, as far as my territory was concerned,
927 on account of instructions received from my superior officers, L. J. Drake, General Manager, J. A. Moffett and Alex. McDonald.

Interrogatory 20. After the Consolidated Tank Line Company was succeeded by the Standard Oil Company of Kansas City, state what changes, if any, were made in the business, in the officers and employes and in the manner of conducting business, and state what changes were made in the business, in the officers and employes and in the general course and conduct of the business after the Standard Oil Company of Indiana succeeded to the Standard Oil Company of Kentucky.

Answer. There were no changes after the Consolidated Tank Line Company was succeeded by the Standard Oil Company of Kentucky. After the Standard Oil Company of Indiana succeeded to the Standard Oil Company of Kentucky we made our reports to the Chicago office instead of Cincinnati. There was no change as regards the officers and employes as far as my territory was concerned.

Interrogatory 21. During your connection with the business, who was the general manager of the Standard Oil Company of Indiana, the Standard Oil Company of Kentucky and the Consolidated Tank Line Company, and to whom and to what place did you make your reports?

Answer. During my connection with the business the General Manager of the Standard Oil Company of Indiana was L. J. Drake, as far as my territory was concerned. The General Manager of the Standard Oil Company of Kentucky and of the Consolidated Tank Line Company was the same. As manager of the Consolidated Tank Line Company and of the Standard Oil Company of Kentucky I reported to Cincinnati, to the officers of the Standard Oil Company of Kentucky at Cincinnati. My reports of the Standard Oil Company of Indiana were directed to the officers at Chicago.

Interrogatory 22. During the time you were manager of the Consolidated Tank Line Company what was the course of busi-
928 ness in case an order was received for a shipment of oil, or inquiry was made for the price of oil, from a dealer in Waters-Pierce territory? What was the course of business when you were manager for the Standard Oil Company of Kentucky?—while you were manager of the Standard Oil Company of Indiana?

Answer. Either the order was sent to the Waters-Pierce Oil Company at St. Louis or we made the shipment and reported the sale to

the head office at Cincinnati. It was the same while I was manager of both the Standard Oil Company of Kentucky and the Standard Oil Company of Indiana, the order going to the headquarters of the company either at Chicago or at Cincinnati.

(Interrogatory 23 and answer omitted.)

Interrogatory 24. While you were manager at Kansas City for either of the three companies, in what cars did you get your shipments?

Answer. Union Tank Line.

Interrogatory 25. State whether or not you made tank car reports, and if so, state to whom they were made and at what place.

Answer. We did. My recollection is that they were made to the general offices at Cincinnati or Chicago, and also to 26 Broadway, New York.

Interrogatory 26. State from what refineries you got your oil during your management, and state to whom the refineries belonged.

Answer. We received shipments from different refineries at Cleveland, Ohio, and Whiting, Indiana, our understanding being that they belonged to the Standard Oil Company.

Interrogatory 27. While you were connected with the business at Kansas City, state whether or not any system was in operation in reference to securing information as to shipments by competitive companies, and if so, state in detail the plan or system of operation, and state the purpose for which the information was received,
929 and what use was made of it?

Judge STEDMAN: We object, Your Honor, to the answer to that question,—first, because it is immaterial and irrelevant; and second, because the occurrences there related by the witness appear to have transpired in other States; and third, because it is not shown that this defendant had any connection with or knowledge of the matters related by the witness.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. We had a system of obtaining information in reference to the receipts by competitors of shipments, and this information was transmitted to our general offices. We obtained this information in different ways by our own employes, by our employes' going to the railroad yards and taking the numbers of the cars, and also through the assistance of the employes of the railroad companies. The purpose of obtaining this information was to keep our general offices informed as to the business of the competitors.

Interrogatory 28. While you were manager of the business at Kansas City, state whether or not you ever did any business in Texas, and if you say you did not, state why not.

Answer. No, because it was not in my territory.

Interrogatory 29. State whether or not during all of your connection with the oil business you have known of Union Tank Line cars being used except by the Standard Oil interests.

Answer. No.

930 Mr. LIGHTFOOT: We will next introduce the deposition of Anthony V. Jockel.

Judge STEDMAN: May it please Your Honor, we desire to interpose an objection to the deposition of this witness as a whole, upon the ground that the transactions concerning which he testifies occurred wholly without the limits of the State of Texas, and have no reference to any business or transactions of this defendant within the State of Texas.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Interrogatory 1. What is your name, where do you reside, and in what business are you engaged?

Answer. Anthony V. Jockel, Brooklyn, New York; bookkeeper and salesman.

Interrogatory 2. State whether or not you have been at any time connected with the Standard Oil Company of New Jersey, and if so, state when and in what capacity.

Answer. From June, 1904, until December 1, 1904; capacity as bookkeeper.

Interrogatory 3. State whether or not you have ever been engaged by the Waters-Pierce Oil Company. If so, state the circumstances of your transfer or employment, and state when and where you worked for the Waters-Pierce Oil Company.

Judge STEDMAN: We object, Your Honor, to the answer of the witness beginning with the words "In November," on the ground that it is hearsay,—States what he has been informed.

The COURT: What portion is it you object to?

Judge STEDMAN: I object first to that part of his answer beginning with the words "In November." I object to that sentence first, because it appears—that sentence and the next sentence, because

931 they both appear to be hearsay. Then after that he refers to a letter, which is the best evidence of its contents, and the nonproduction of which is not accounted for.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. Yes. From December, 1904, to February, 1905, at Oklahoma City, O. T. In November, 1904, I was informed by the manager of the Newark branch of the Standard Oil Company of New Jersey that my transfer had been requested to some Western agency. About a week after this conversation, or this notification, rather, I was told by Mr. Young, the manager of the Newark branch of the Standard Oil Company of New Jersey, that Mr. King desired my presence at 26 Broadway the following day. He gave me a letter of introduction to Mr. King, which I presented, and Mr. King in turn introduced me to Mr. R. H. McNall, at 26 Broadway, with whom I made all arrangements regarding my transfer to the Waters-Pierce Oil Company. About a week later I left New York for St. Louis, and saw Mr. R. P. Tinsley, whom Mr. McNall had directed me to see before going to Oklahoma City. I remained with Mr. Tinsley about two or three hours making final arrangements, and then left for Oklahoma City.

Interrogatory 4. State whether or not you have ever been in St. Louis, Missouri, in the office of the Waters-Pierce Oil Company, and if so, state when it was, and how you came there, and the persons whom you saw and conversed with there.

Answer. Yes. In December, 1904, through my instructions to see Mr. Tinsley before proceeding to go to Oklahoma City. While there I saw Mr. Tinsley, Mr. Backus, Mr. Gruet, Mr. C. P. Ackert and Mr. King.

(Interrogatory 5 and answer omitted.)

Interrogatory 6. State the character of the duties of Mr. King, and if you say that it was auditing for the Waters-Pierce Oil
932 Company, state what part of the audit was performed by him.

Answer. Merely the auditing of all monthly reports which were submitted directly to the St. Louis office.

Interrogatory 7. If you say that Mr. King's duties were with reference to the stock reports of the Waters-Pierce Oil Company, state whether or not you have seen in the auditing department of the Standard Oil Company such reports or like reports.

Answer. Mr. King had nothing whatever to do with the auditing of the stock reports of the Standard Oil Company, and I did not see any report whatever in the St. Louis office which had been submitted by a Standard Oil branch. All reports that I saw in the St. Louis office were rendered by the Waters-Pierce Oil Company branches on forms which were being used by the Standard Oil Company in the East.

Interrogatory 8. If you say that you saw Mr. Tinsley or Mr. Backus in St. Louis, state whether or not these parties had been connected with the business of the Standard Oil Company at 26 Broadway before that time, and if you say they had, state what was the character of their work for the Standard Oil Company of New Jersey, and state in what particular office at 26 Broadway they were engaged.

Answer. Mr. Tinsley and Mr. Backus were both at 26 Broadway, New York, before going with the Waters-Pierce Oil Company at St. Louis. Mr. Tinsley was the agent in New York who received all reports of the Standard Oil Company of New Jersey, also all transfers for material delivered by other Standard Oil Companies and to other Standard Oil Companies by the Newark branch of the Standard Oil Company. Mr. Backus was with Mr. Tinsley in New York at 26 Broadway. The number of the room I don't remember.

Interrogatory 9. If you say that Mr. Tinsley had before going to the Waters-Pierce Oil Company been at 26 Broadway and had received reports, state from what companies Mr. Tinsley received re-
ports and the character of these reports.

933 Answer. The only company that I know of his receiving reports from was the Standard Oil Company of New Jersey, the character of these reports being regular monthly stock reports, and other reports which I can't remember just now.

Interrogatory 10. After visiting St. Louis where did you then go, and in what work were you engaged, and under whom did you work?

Answer. After leaving St. Louis I went to Oklahoma City and proceeded to install the Standard Oil reports, or report forms, in the

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Oklahoma office, Mr. Ebie being at that time in charge of the Oklahoma division.

Interrogatory 11. If you have stated that you went to Oklahoma City and were thereafter on the pay-roll of the Waters-Pierce Oil Company, state whether or not you made any reports as to the amount of business done by the Waters-Pierce Oil Company and that done by competing companies in your territory.

Answer. Yes. We rendered monthly reports of the amount in gallons of oil sold—or barrels, rather, I should say instead of gallons—by the Waters-Pierce Oil Company in the Oklahoma division, and the competing companies in the same division; these same reports showing the average increase or decrease in business done throughout the Territory by the Waters-Pierce Oil Company and the competing companies. And on second thought, I believe we also rendered the total amount of gallons, as near as could be ascertained.

Interrogatory 12. State whether or not before your transfer from 26 Broadway to Oklahoma City you had any conversation with any officers of the Standard Oil Company or the Waters-Pierce Oil Company at 26 Broadway concerning the concealment of your connection with the Standard Oil Company, and if so, state who these persons were, and what their positions were, and state what the conversation was.

Judge STEDMAN: Your Honor, we object now to the answer of the witness because it is hearsay,—relates what was stated to him
934 by Mr. Young. While Mr. Young is shown to have connection with one of the Standard Oil Companies, it does not appear that he had any connection with this defendant, nor does it appear in the communication that he made to the witness he was acting within the scope of his employment or in the discharge of his duties or functions as the manager of that branch of the Newark branch of the Standard Oil Company.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. Mr. Young, the manager of the Newark branch of the Standard Oil Company, told me that after I had left New York I was to forget that I had been with the Standard Oil Company. Mr. McNall, the commercial agent of the Waters-Pierce Oil Company at 26 Broadway, also instructed me not to mention that I had been with the Standard Oil Company.

Interrogatory 13. State what instructions you had, if any, before going to Oklahoma City with reference to declaring that the Waters-Pierce Oil Company was in competition with the Standard Oil Company, and if you had such instructions, state by whom they were given.

Answer. The instructions that I received regarding the Waters-Pierce Oil Company being independent of the Standard Oil Company and competitors to them were received by me from Mr. Ebie in Oklahoma City.

Interrogatory 14. From whom or from what companies was the oil and other products sold at Oklahoma City by the Waters-Pierce Oil Company obtained?

Answer. From the Standard Oil Company of Indiana, from the Galena Oil Company—that is all that I can remember now.

Interrogatory 15. State whether or not it all came from the Standard Oil interests and connections.

Answer. As far as I can remember, yes. Some of the oil that came to Oklahoma City was in Waters-Pierce Oil Company
935 tank cars and barrels, and therefore there was no telling where the oil contained in the cars and barrels came from originally.

Interrogatory 16. State what steps, if any, were taken in the conduct of the business at Oklahoma City to conceal the fact that the Waters-Pierce Oil Company was handling the products of the Standard Oil Company.

Answer. None other than the removing of the name of the Standard Oil Company from all barrels of lubricating oil and in some few cases gasoline and coal oil before shipment.

Mr. LIGHTFOOT: We next offer the deposition of HARRY EGBERT PLATT, of the City of New York.

Interrogatory 1. What is your name, age, residence and occupation?

Answer. Harry E. Platt; age 24; residence New York City; clerk.

Interrogatory 2. Please state whether or not you were ever employed at 26 Broadway, New York?

Answer. I was.

Interrogatory 3. When did you begin employment at that place?

Answer. In February, I don't know whether it was 1902 or 1903.

Interrogatory 4. What was your first position there? If you state, or if it be a fact, that you was employed as a clerk by the Union Tank Line, then state who was the President and managing officer of that company.

Answer. I was employed by the Union Tank Line as clerk under the jurisdiction of Mr. Cook. My first position was clerk. Mr. W. H. Tilford, president.

Interrogatory 5. Please state whether the officers of that company were located at 26 Broadway?

Answer. They were.

936 Interrogatory 6. Under whose jurisdiction were you when you were in the employ of the Union Tank Line Company?

Answer. Mr. Cook.

Interrogatory 7. Were you afterwards transferred to any other office?

Answer. I was.

Interrogatory 8. If so, state to whose office you were transferred?

Answer. To the office of Mr. W. H. Tilford.

Interrogatory 9. How long did you work for the Union Tank Line Company?

Answer. About four months.

Interrogatory 10. If you have stated, or if it be a fact, that you were transferred to some other position, then state how you happened to be so transferred?

Answer. I was notified to report there the following Monday.

Interrogatory 11. If you have stated, or if it be a fact, that you were transferred to Mr. Tilford's office, then state by what company you were paid after that time?

Answer. Standard Oil Company of New Jersey.

Interrogatory 12. What was the business of the Union Tank Line Company?

Answer. To transport oil in tank cars.

Interrogatory 13. If you have stated, or if it be a fact, that their business was to operate tank cars throughout the United States, please state for what companies they were operated, and whether or not said companies had offices at 26 Broadway and were connected with the business there?

Answer. There were cars assigned to different companies, but whether they had offices there I do not recall, nor what connection there was between the companies.

937 Interrogatory 14. Please state whether or not the Union Tank Line Company furnished or assigned any cars to the Waters-Pierce Oil Company of St. Louis for their use in transporting oil in bulk?

Answer. There were cars assigned to the Waters-Pierce Oil Company.

(Interrogatory 15 and answer omitted.)

Interrogatory 16. What reports, if any, did you get from the Waters-Pierce Oil Company in reference to those cars?

Answer. Reports showing arrival, whether loaded or empty, and when shipped, by what railroads.

(Interrogatory 17 and answer omitted.)

Interrogatory 18. State fully the nature and character of the reports, and by what companies they were made?

Answer. Reports showing arrival and shipment of tank cars by Waters-Pierce Oil Company.

Interrogatory 19. After you was transferred to Mr. Tilford's office, if you were so transferred, were you on the salary list of the Standard Oil Company of New Jersey?

Answer. I was.

Interrogatory 20. Whose office were you in, Mr. W. H. Tilford's or Mr. H. M. Tilford's?

Answer. In what was known as the outside office, serving them both.

Interrogatory 21. Describe how the offices of W. H. Tilford and H. M. Tilford were situated with reference to each other?

Answer. A small room between them, connecting door.

Interrogatory 22. Did you know a man by the name of R. H. McNall?

Answer. I did.

Interrogatory 23. Where were Mr. McNall's offices?

Answer. Room 1209.

938 Interrogatory 24. If you have stated, or if it be a fact, that his office was in the same room as Mr. H. M. Tilford's, please state if their desks were in the same room?

Answer. They were in the same room.

Interrogatory 25. When you were in Mr. Tilford's office what were your duties?

Answer. Clerk.

Interrogatory 26. Did you have any occasion during the time you were in Mr. Tilford's office to see any reports from the Waters-Pierce Oil Company relating to the business of the Waters-Pierce Oil Company?

Answer. I did.

Interrogatory 27. If so, please state what kind of reports you saw, and in whose possession were they?

Also, state fully, and in detail, what opportunities you had for observing reports that were received by Mr. R. H. McNall from the Waters-Pierce Oil Company, if any were received by him?

Answer. Marine oil reports in my possession to distribute to the proper officers. In the capacity of seeing that they were delivered to the proper parties.

Interrogatory 28. If you have stated, or if it be a fact, that you saw cash reports from the Waters-Pierce Oil Company, please state how often such reports were received there?

Answr. I have seen cash reports, but do not recall how often they were received.

Interrogatory 29. Who received the reports from the Waters-Pierce Oil Company in that office?

Answer. They were addressed to Mr. McNall.

(Interrogatory 30 and answer omitted.)

Interrogatory 31. Do you know Mr. L. D. Clark and Mr. A. H. Brainerd?

939 Answer. I do.

Interrogatory 32. Did you know them at the time you were working at 26 Broadway?

Answer. I did.

Interrogatory 33. Did they have an office at 26 Broadway?

Answer. They did.

Interrogatory 34. What position did they hold?

Answer. They were in the comptroller's office.

Interrogatory 35. If you have stated, or if it be a fact, that Mr. Clark was the Comptroller for the Standard Oil Company, and that Mr. Brainerd was Assistant Comptroller, please state whether the cash reports and other reports received by Mr. McNall were sent to their office, or sent to the office of Wade Hampton?

Answer. I do not recall which office they were sent to.

Interrogatory 36. Please state who would take the reports from Mr. McNall to Messrs. Clarke and Brainerd's or other office?

Answer. Either the office boy or myself.

Interrogatory 37. Please state whether or not any of them were ever sent such office by you?

Answer. They have been.

Interrogatory 38. Please state how long you were in Mr. Tilford's office?

Answer. About two years.

Interrogatory 39. If you have stated, or if it be a fact, that you were there over two years, then state whether or not this course of handling these daily cash statements continued during the entire time that you were there?

Answer. I do not recall any change.

(Interrogatory 40 and answer omitted.)

Interrogatory 41. If you have stated, or if it be a fact,
940 that a report they called the Marine Oil Report was so received, please state what disposition was made of same after it had been received?

Answer. It was sent down to the Marine Oil Department.

Interrogatory 42. If you have stated, or if it be a fact, that it was sent to the Marine Oil Department, then state whether or not there was a marine oil department at 26 Broadway, and who was in charge of same?

Answer. The Marine Oil Department at 26 Broadway was in charge of Mr. Bedford.

Interrogatory 43. What position did Mr. R. H. McNall occupy at 26 Broadway during the time that you were there?

Answer. Commercial Agent of the Waters-Pierce Oil Company.

Interrogatory 44. Did you ever see how the letters received by him were addressed? If so, please state how they were addressed?

Answer. Mr. R. H. McNall, Commercial Agent, 75 New Street, New York City.

Interrogatory 45. If you have stated, or if it be a fact, that they were addressed "Mr. R. H. McNall, Commercial Agent, 75 New Street," then state where 75 New Street was with reference to 26 Broadway?

Answer. It was the rear entrance to the building.

(Interrogatory 46 and answer omitted.)

Interrogatory 47. Do you know whether or not there was a committee called the Domestic Trades Committee at 26 Broadway?

Answer. I have heard of such a committee.

Interrogatory 48. Please state whether or not Mr. H. M. Tilford was a member of that committee.

Answer. He was a member of a committee—whether it was the Domestic Trades, I can not say.

Interrogatory 49. Did you know Mr. W. E. Bemis while
941 you were employed at 26 Broadway? What department was he in?

Answer. I did; he was in the statistical department.

Interrogatory 50. Please state whether or not Mr. McNall received a report styled "Sales and Deliveries of Refined Oil" from the Waters-Pierce Oil Company?

Answer. I have seen such a report.

Interrogatory 51. Did you ever see any such reports received by him?

Answer. I did.

(Interrogatories 52 and 53 and answers omitted.)

Interrogatory 54. Please state whether or not, to your knowledge, the reports stating the conduct of the business of other companies were sent to Mr. Bemis?

Answer. They were.

Interrogatory 55. What room was known as the Marine Oil Department?

Answer. Room 600.

Interrogatory 56. Please state, if you know, to what company, located at 26 Broadway, the Marine Oil Department belongs?

Answer. Standard Oil Company.

Interrogatory 57. Who had charge of the Marine Department?

Answer. Mr. Bedford.

Interrogatory 58. Please state whether or not letters written in the Marine Oil Department were sent to Mr. McNall to be signed by him and forwarded to the Waters-Pierce Oil Company?

Answer. I have seen such letters.

Interrogatory 59. Please state what other communications, if any, relating to the business of the Waters-Pierce Oil Company, were received by Mr. McNall at his office?

Answer. I do not recall.

Interrogatory 60. If you have stated, or if it be a fact, that
942 the reports of appropriations for buildings, etc., of the Waters-Pierce Oil Company were received by him, please state what disposition was made of them by Mr. McNall?

Answer. Reports of appropriations of the Waters-Pierce Oil Company were made to him. I do not recall what disposition was made of them.

(Interrogatories 61, 62, 63 and 64 and answers omitted.)

Interrogatory 65. Did you know Mr. Walter Jennings while you were employed at 26 Broadway?

Answer. I did.

(Interrogatory 66 and answer omitted.)

Interrogatory 67. What position did Mr. Jennings occupy at 26 Broadway?

Answer. He was a member of the executive committee.

Interrogatory 68. Please state what other directions, if any, or communications relating to the conduct of the Waters-Pierce Oil Company came through that office while you were employed there?

Answer. Salary matters.

Interrogatory 69. If you have stated, or if it be a fact, that you have seen requisitions for advance in salaries come through in that way, please state by whom they were passed upon?

Answer. Mr. McNall advised them when the said increase was all right.

Interrogatory 70. Please state, if you know, what room the Domestic Trades Committee occupied at 26 Broadway?

Answer. Room 1003 was generally known as the Domestic Trades Committee room.

Interrogatory 71. Please state whether or not Mr. McNall received from the Waters-Pierce Oil Company letters in which there were blank carbon copies without address or signature?

Answer. There were such copies received by him.

943 (Interrogatories 72, 73 and 74 and answers omitted.)

Interrogatory 75. Please state whether or not you have seen letters sent to Mr. McNall from various departments at 26 Broadway unsigned?

Answer. I have.

Interrogatory 76. If you so state, then state whether or not it was the custom of Mr. McNall to sign the letters so received and forward them to the Waters-Pierce Oil Company?

Answer. It was.

(Interrogatory 77 and answer omitted.)

Interrogatory 78. What sort of stationery would such letters be written upon in the other departments?

Answer. Waters-Pierce Oil Company.

Interrogatory 79. State whether or not you know who was at the head of the Lubricating Department at 26 Broadway?

Answer. Mr. S. H. Paine.

Interrogatory 80. Please state whether or not you have seen letters written on the stationery of the Waters-Pierce Oil Company come from that department to be signed by Mr. R. H. McNall?

Answer. I have.

Interrogatory 81. Please state whether or not Mr. McNall received communications from the Waters-Pierce Oil Company during the entire period in which you were employed at 26 Broadway, and whether such communications would be referred to other departments at 26 Broadway.

State fully your information concerning the business methods employed between the Waters-Pierce Oil Company and the Standard Oil Company of New Jersey, and other like interests located at 26 Broadway, in communicating and transacting business with each other.

Answer. He did receive such communications, and same were referred to other departments. I do not know the business
944 methods employed in communicating.

Mr. LIGHTFOOT: We next offer in evidence the deposition of ALBERT A. SMITH, of New York.

Interrogatory 1. What is your name, age and place of residence?

Answer. Albert A. Smith; my age is 26; my residence is 131 Hooper Street, Brooklyn, New York.

Interrogatory 2. What is your occupation and where are you employed?

Answer. I am now superintendent at the new Hall of Records Building—superintendent of construction.

Interrogatory 3. Did you formerly work at 26 Broadway, New York? If so, in what capacity?

Answer. As stenographer.

Interrogatory 4. If in answer to the foregoing interrogatory you state, or if it be a fact, that you were employed as a stenographer, then state in whose office you were employed, and how long you were so employed?

Answer. I was employed—I started with O. C. Burt and Mr. E. C. Goodeno, then I was transferred to the office of Mr. W. E. Bemis, Room 1210 in that building, 26 Broadway, on the twelfth floor.

Interrogatory 5. If in answer to the foregoing interrogatory you state, or if it be a fact, that you were employed in the office of O. C. Burt and E. C. Goodnow, state how long you were employed in their offices, and if you were afterwards transferred to any other department or office.

Answer. As far as I can recollect, I started to work with Messrs. Burt and Goodeno's office in May, 1903. At that time that was known as the shipping department. Afterwards, about May of the following year, I was transferred upstairs to Mr. Bemis'
945 office.

Interrogatory 6. Do you know W. E. Bemis? Please state whether or not he had an office at 26 Broadway?

Answer. He did.

Interrogatory 7. If you have stated, or if it be a fact, that he had an office at 26 Broadway, and if you were employed in his department, then state what the number of his room was and the character of your employment in his department, and how long you were employed there?

Answer. His room was a suite of rooms. He had a private office in that suite, which was called Room 1210. My position was that of stenographer. I must have been there about a year and a half.

Interrogatory 8. If you state, or if it be a fact, that you were employed in Mr. Bemis' department about two years, then state when you began and when you quit?

Answer. Well, as near as I can recollect it was in May of 1904 that I began, and I quit in June, 1905.

Interrogatory 9. Please state if you know whether Mr. Bemis was on any committees at 26 Broadway, and what committees, if any, he was a member of?

Answer. He was on a committee that met down in room 106 on the first floor. At the present time I can not tell you the name of the committee, because I don't remember it. He was at one time, I know positively, a member of the Domestic Trades Committee, which at the time I left the company met in room 1003 on the tenth floor.

Interrogatory 10. Please state if you know what department Mr. Bemis was in charge of at 26 Broadway?

Answer. The statistical department.

Interrogatory 11. Please state if you know whether reports of any character were made to the department of which Mr. Bemis was the head?

946 Answer. Reports from all over the world came to Mr. Bemis, that is so far as their work was concerned, wherever

they sold oil. That is, they did not come directly to him, they came to his employés in that office.

Interrogatory 12. Please state from what companies or corporations reports were received by Mr. Bemis?

Answer. Well, I have seen reports from the Republic Oil Company, from the Waters-Pierce Oil Company, and from other companies connected with them throughout the country; in fact, all reports pertaining to their business were sent to Bemis.

Interrogatory 13. Did you know of such a company as the Waters-Pierce Oil Company of Missouri?

Answer. I did.

Interrogatory 14. Please state whether or not reports of any character were received at Mr. Bemis' office during the period of time you were employed there, from the Waters-Pierce Oil Company?

Answer. They were.

Interrogatory 15. If in answer to the foregoing interrogatory you have stated, or if it be a fact, that reports were received from the Waters-Pierce Oil Company, please state the nature and character of such reports?

Answer. Reports that I noticed were reports, as near as I can recollect, as to their monthly deliveries of oil and different products connected with the business, as well as reports of competitive shipments.

Interrogatory 16. Please state whether or not you received dictation of letters from Mr. Bemis or any other person in authority in his department for the Waters-Pierce Oil Company. If so, state the names of the persons who dictated said letters and the positions they held in that department?

Answer. I have received letters from Mr. E. T. Wilson and
947 from a Mr. O'Connor, Mr. Pelouze, regarding the general conduct of the business. Addressed to the heads of the different departments.

Interrogatory 17. If in answer to the foregoing interrogatory you have stated, or if it be a fact, that letters to the Waters-Pierce Oil Company were dictated to you, then state about what matters the letters were dictated, and how often such letters were dictated to you?

Answer. Well, it is pretty hard to state how many; sometimes I would have about twenty a week, other times I had about two. They were all sent in to Mr. R. H. McNall to be signed.

Interrogatory 18. If you have stated, or if it be a fact, that the letters dictated to you, if any were so dictated, were in reference to the conducting of the business of the Waters-Pierce Oil Company, then state whether or not such letters were dictated to you during the entire period of time that you were employed in Mr. Bemis' department.

Answer. They were.

Interrogatory 19. Please explain in detail from what different parties you received such letters; what copies, if any, were made. Who signed them?

Answer. I received letters from Mr. E. T. Wilson, Mr. O'Connor, Mr. Pelouze, and others. They were all signed by Mr. R. H. McNall, who occupied quarters in Mr. H. M. Tilford's department. We al-

ways made a carbon copy, but about a month before I left the company they obliterated the name on said carbon copy by placing a piece of paper over the carbon copy.

Interrogatory 20. Please state whether or not the letters you wrote in reference to the conducting of the business of the Waters-Pierce Oil Company were dictated by one or more persons in your office, and signed by some one else?

Answer. They were.

948 Interrogatory 21. Please state what method was pursued in making copies of such letters as you wrote?

Answer. The letters I wrote were sent in to Mr. McNall, who signed them, copied them in his book, and returned them to us to be mailed.

Interrogatory 22. If in answer to the foregoing interrogatory you have stated, or if it be a fact, that one carbon copy of each letter was retained in Mr. Bemis' office and the original was sent elsewhere to be signed, please state to whom the original was sent to be signed?

Answer. R. H. McNall.

Interrogatory 23. Please state whether or not the name of the company to whom the letter was written appeared on the carbon copy retained? If not, by whose direction was the name omitted from the letter?

Answer. A month before I left the company we used to address the different parties to whom we were writing; afterwards in writing the letter we placed a piece of paper over the name, so that it would not show on the carbon, but the name would show on the original letters.

Interrogatory 24. Please state the name or names of the parties in Mr. Bemis' office who dictated letters to the Waters-Pierce Oil Company.

Answer. Mr. O'Connor, Mr. Wilson, Mr. Pelouze, and others.

Interrogatory 25. Did you know Mr. R. H. McNall? Where was his office located?

Answer. His office was in a suite of rooms known as 1209 and 1210; his room was really 1209, it was really one big suite.

Interrogatory 26. If you have stated, or if it be a fact, that letters written by you to the Waters-Pierce Oil Company were sent to Mr. R. H. McNall to be signed, please state by whose direction they were so sent?

949 Answer. By the direction of the man that wrote them.

Interrogatory 27. Please describe the stationery upon which you wrote letters addressed to the Waters-Pierce Oil Company.

Answer. Stationery was received from Mr. R. H. McNall's office, and the heading on same read Waters-Pierce Oil Company.

Interrogatory 28. Please state whether or not you had any letter heads with the name of the Waters-Pierce Oil Company upon them in your office or desk?

Answer. I had them in my desk, all sizes.

Interrogatory 29. If you have stated, or if it be a fact, that the original letters written by you to the Waters-Pierce Oil Company were written on the Waters-Pierce Oil Company's letter heads, then state where you obtained such stationery and under whose direction the letters were written on Waters-Pierce Oil Company stationery?

Answer. I obtained the letter heads from Mr. R. H. McNall's office, and I received orders at the time I entered Mr. Bemis' office to address all letters to them dictated by other parties in the office on Waters-Pierce Oil Company stationery. The orders came from everybody connected with that letter-writing, particularly from Mr. Wilson.

Interrogatory 30. If you have not already done so, please state in detail the substance of the letters written by you to the Waters-Pierce Oil Company.

Answer. Why, it was the general conduct of their business, principally competitive shipments, which letters I received from Mr. O'Connor. That means the letters regarding competitive shipments came from Mr. O'Connor.

Interrogatory 31. Please state in detail the character of letters and substance of letters and reports received in your department from the Waters-Pierce Oil Company, and by whom they were sent to your department.

Answer. I know reports came there, but I can't remember
950 whom they came from, nor the substance of them. I can't remember the names of the parties who sent the letters. J. P. Ackert is one of the parties who sent the letters. I am not sure about the initials, I know it is Ackert—A-c-k-e-r-t, as nearly as I can remember.

Interrogatory 32. Please state whether or not letters were dictated to you in that department addressed to the Standard Oil Company of Indiana, the Republic Oil Company, the Atlantic Refining Company, the Standard Oil Company of Indiana, the Continental Oil Company of Denver, the Standard Oil Company of New Jersey, the Standard Oil Company of New York and the Standard Oil Company of Chicago?

Answer. I have written to Cleveland, yes. Yes as to the Republic Oil Company; yes as to the Atlantic Refining Company; as to Standard Oil Company of Indiana, I can't remember. Yes as to the Continental Oil Company of Denver. As to the Standard Oil Company of New Jersey, I used to address them in the building. As to the Standard Oil Company of New York, of course. As to the Standard Oil Company of Chicago, I don't know them, they were not in my time.

Interrogatory 33. Please state whether or not letters and reports were received in your department from the different companies mentioned in the foregoing interrogatory.

Answer. They were, that is with the exception of that Chicago, I don't know anything about that.

At 12.35 P. M. Court adjourned until 2.30 P. M.

951 Court opened at 2.30 P. M.

Mr. LIGHTFOOT: We now offer the deposition of Francis D. Carley, of White Plains, New York. We offer a portion of the deposition; there are some portions of it we do not offer.

Interrogatory 1. What is your name, where do you live, and what is your business?

Answer. Francis D. Carley. White Plains, N. Y. Dealer in securities.

Interrogatory 2. State whether or not you have ever been in the oil business, and if so, state where and when, and state what firms or companies you were connected with.

Answer. Was in the oil business, as near as I can remember, from 1865 to about 1884. Was connected first with the firm of Chess, Carley & Co. Afterward with the corporation of Chess, Carley & Co., both of Louisville, Kentucky; and was also interested for a few years in the Waters-Pierce Oil Company, of St. Louis, Mo.

Interrogatory 3. State whether or not you were engaged in the business of refining and selling the products of petroleum, and if so, in what States.

Answer. Was engaged in the business of refining and selling petroleum in Kentucky, but as far as I remember the Waters-Pierce Oil Company of St. Louis did not engage in refining. Its business was that of a dealer..

Interrogatory 4. State whether or not you have ever sold oil in the States of Missouri and Texas, and state whether or not you discontinued the business of selling oil in those States.

Judge STEDMAN: May it please Your Honor, we wish to interpose the objection that the testimony of this witness relates to occurrences antedating many years the formation of the defendant in this
952 case, the Waters-Pierce Oil Company, and that these matters to which he testifies have no direct or immediate connection with the subject-matter of this litigation.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. I was engaged in selling oil in Texas, but except as one interested in the Waters-Pierce Oil Company, I do not remember to have sold oil in Missouri. And I did discontinue the business of selling oil in Texas, except as interested in the Waters-Pierce Oil Company.

Interrogatory 5. If you have said that you were engaged in the sale of oil in Missouri and Texas, state how you conducted that business, and if you say you owned or operated a tank line, state by what name the tank line was known, and if you say that you have discontinued the business, state the circumstances under which it was discontinued.

Answer. When I say that I was engaged in selling oil in Texas, I mean that the corporation of Chess, Carley & Company was selling oil in Texas. The business was conducted at first by direct shipments of oil from Louisville, Kentucky, generally by way of Galveston, afterwards in tank cars from Cleveland, Ohio, over the Missouri, Kansas & Texas Railroad. When I bought the tank cars for this purpose they were called the M. K. & T. Tank Line, and as I remember it the tanks were mounted on the cars of the M. K. & T. road, or at least part of them. I discontinued the business by the tank cars aforesaid and joined with Waters, Pierce & Company in the formation of the Waters-Pierce Oil Company, as it seemed more

advantageous to distribute oil in Texas from St. Louis as a distributing center.

Interrogatory 6. If you have said that you sold the M. K. & T. Tank Line, state to whom you sold, and state whether or not you took stock in any company in payment for the tank line, and if so, in what company?

953 Judge STEDMAN: We object to that for the reason that the transaction occurred long before the formation of this defendant corporation, and also for the reason that the transaction occurred long before the enactment of the anti-trust laws under which this prosecution is conducted.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. I suppose it should be called a sale or an exchange, which I made in parting with the M. K. & T. Tank Line and taking stock therefor in the Waters-Pierce Oil Company.

Interrogatory 7. If you have answered that you sold the tank line to the Waters-Pierce Oil Company, state whether or not thereafter the tank line ceased to do business in Texas.

Judge STEDMAN: We object to that, Your Honor, for the same reason.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

Answer. The corporation of Chess, Carley & Company ceased to ship oil by means of those tank cars.

Interrogatory 8. Were you a member of or did you hold stock in the Chess-Carley Company, and if so, state whether you had any official position in that company, or had anything to do with its management?

Answer. I did own stock and was its President and had much to do with its management.

Interrogatory 9. State whether or not the Chess-Carley Company took stock in the Waters-Pierce Oil Company, and if so, state why, and the circumstances under which it participated in the organization of the Waters-Pierce Oil Company.

Answer. I can not state positively whether I held the stock of the Waters-Pierce Oil Company in my name or not, but I think
954 I did, because I am quite confident that I bought the M. K. & T. tank cars personally, although I have not looked this matter over for probably twenty years, and have only thought of it when once before I was asked a similar question in New York. Through my transfer of the M. K. & T. tank line I received stock in the Waters-Pierce Oil Company and became a director of that corporation. Since answering the above, I feel more positive that I owned the stock individually.

Interrogatory 10. State whether or not you ever owned individually any stock in the Waters-Pierce Oil Company, and if so, state to whom you sold this stock, if you sold it, and state with whom you negotiated for the sale of the stock, if you negotiated with any one.

State where the parties were with whom you negotiated for the sale of the Waters-Pierce Oil Company stock.

Answer. I do not remember who bought the Waters-Pierce Oil Company stock, but I do remember meeting some one in the building owned by the Standard Oil Company, and my recollection is that W. P. Thompson, who was another director of the Waters-Pierce Oil Company, introduced me to the buyer or brought about the interview.

Interrogatory 11. What corporation, if any, succeeded to the Chess-Carley Company, or to the business of the Chess-Carley Company?

Answer. I think the corporation was called the Standard Oil Company of Kentucky.

Interrogatory 12. State whether or not during the time the Chess-Carley Company was owner of the stock of the Waters-Pierce Oil Company, W. D. Thompson, Horace A. Hutchins and the trustees of the Standard Oil Trust also owned stock in that company, and state whether any one of them was an officer in that company.

Answer. I do not know to what extent W. P. Thompson and Horace Hutchins owned stock, but I remember them as directors in attendance at the meetings. I do not know whether the Standard Oil Trustees owned stock or not, or at least do not remember.

955 Interrogatory 13. What was the business of H. A. Hutchins at that time, and where was he located?

Answer. He was located in Cleveland, and had charge of the selling department of the Standard Oil Company.

Mr. LIGHTFOOT: Now, we don't offer 14, 15 and 16.

Judge PENN: If the Court please, we desire at this time to offer the remainder of the testimony of this witness.

Mr. LIGHTFOOT: We do not object to his offering it, Your Honor, but we don't like to have our proceedings interrupted here.

Judge PENN: It is very short, Your Honor, and we think the jury will understand the testimony of this witness better if we put in the balance at this time.

Mr. ALLEN: We object to one part of the testimony they desire to offer, as being in direct violation of the agreement we have made. We wish to make the further objection, if the Court please, to the introduction of this, because it was not crossed by the defendant.

Judge PENN: I would like to know just what part of it, is it, you object to.

Mr. ALLEN: Well, we object to the introduction of any of it.

Mr. BRADY: 15 and 16 are the answers we object to.

Judge PENN: With reference to the last objection made, Your Honor, we think the rule, whether this was crossed or not, is that wherever one party offers one part of a document or statement the balance of it is admissible at the instance of the other party, especially whenever it is necessary to shed light on what has been introduced.

The COURT: If it relates to the same subject as that which is in evidence, it is.

Judge PENN: Well, Judge Stedman, if you will read the questions we will offer them in regular order.

Interrogatory 14. State whether or not after the sale of the
956 M. K. & T. Tank Line the Chess-Carley Company did any business in Texas, and if not, state why not.

The COURT: The objection is overruled.

Answer. It did not do much business in Texas, in fact almost no business, because the business could not be handled advantageously by way of Louisville, Kentucky, and I thought my interests in the Waters-Pierce Oil Company would compensate me for giving up the strained effort to do business in that State.

(Nos. 15 and 16 excluded on objection by plaintiff.)

Mr. LIGHTFOOT: We next offer in evidence the deposition of W. N. Davis, who resides in Kansas City.

Interrogatory 1. What is your name, and where do you live, and in what business are you and have you been?

Answer. William N. Davis. Kansas City, Missouri. Manufacture and sale of lubricating oils and other products of petroleum, crude oils.

Interrogatory 2. With what oil company are you now connected, if any, and how long have you been connected with that company?

Answer. The Keystone Oil Company of Kansas City and Interocean Oil Company of Chicago. About nine years.

Judge STEDMAN: Your Honor, we wish to interpose the objection to the deposition of this witness in its entirety, for the reason that it relates to transactions between companies other than this defendant, to which this defendant was in no wise a party; and further, that the transactions detailed by the witness transpired in other States; and further, upon the general ground of immateriality.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

Interrogatory 3. Before making your present connection,
957 with what company were you connected?

Answer. The Interstate Oil Company, Kansas City, Missouri.

Interrogatory 4. If in answer to the last question you have said that you were connected with the Interstate Oil Company, state how long you were connected with it, and state what territory the company operated in.

Answer. From the inception of the company until I disposed of my stock in about 1897. There was no prescribed territory for the Interstate Oil Company to operate in. We got business all over the world.

Interrogatory 5. State what companies you came in competition with in Missouri.

Answer. Standard Oil Company, Republic Oil Company, Waters-Pierce Oil Company, National Oil Company, and all smaller companies.

Interrogatory 6. If you say that you met the Waters-Pierce Oil Company and the Standard Oil Company in Missouri, state whether or not you ever met both companies in the same place or territory.

Answer. Never.

Interrogatory 7. State whether or not you have ever met in any other State than Missouri both the Waters-Pierce Oil Company and the Standard Oil Company in competition with you at the same place.

Answer. No, sir, never.

Interrogatory 8. Prior to the time you became connected with the Interstate Oil Company, state whether or not you had any connection with the Standard Oil Company. If so, state what the connection was, and how long it continued, and state what name it was operated under at that place and time.

Answer. I was connected with the Consolidated Tank Line Company as manager of Kansas City and contributory territory. To the best of my knowledge this Tank Line Company was the
958 Standard Oil Company. To the best of my recollection, I was connected with the company for seven years.

Interrogatory 9. State to whom you made your reports while connected with the Standard Oil Company or the Consolidated Tank Line Company, and at what place.

Answer. To the Consolidated Tank Line Company, Cincinnati, Ohio, which was the general headquarters of that company. I also made reports to Silas H. Payne, 26 Broadway, New York, with regard to lubricating oils, when requested to do so.

Interrogatory 10. If you have stated that you made reports to Silas H. Payne at 26 Broadway, New York, or if that be the case, state who S. H. Payne was and his connection with the Standard Oil Company?

Answer. To the best of my recollection, he was an officer of the Standard Oil Company, and looked after the lubricating oil department.

Interrogatory 11. State whether or not you knew Alex. McDonald; if so, state what connection, if any, he had with the Consolidated Tank Line Company, and state where he is, and what his business is at this time, if you know.

Answer. I knew Mr. McDonald, who was president of the Consolidated Tank Line Company at the time of my connection with that company. The last I knew he was a resident of New York City and an officer of the Standard Oil Company.

Interrogatory 12. Did you know Frank Rockefeller? If so, state what connection he had with the Consolidated Tank Line Company.

Answer. I knew Mr. Rockefeller while he was connected in some capacity with the Consolidated Tank Line Company. I do not recollect the nature of his connection.

Interrogatory 13. During your connection with the Consolidated Tank Line Company, state from whom that company received its oil, and state the location and ownership of the refineries from which oil was received.

959 Answer. My orders for oil were sent to Cincinnati, and were filled from there.

Interrogatory 14. State whether or not the Consolidated Tank Line Company was permitted to sell oil all over the State of Missouri; if

not, state what portion of the State it sold oil in, and state whether or not it sold oil in the balance of the State.

Answer. There was a line drawn; my recollection is that all territory West of the M. K. & T. railway was reserved for the Consolidated Tank Line Company, and territory East belonged to Waters-Pierce Oil Company.

Interrogatory 15. What instructions, if any, did you give traveling men with reference to the division of territory in Missouri, and state why these instructions were given.

Answer. I never permitted traveling men to seek patronage in territory reserved for the Waters-Pierce Oil Company, in order to save any conflict between the two companies.

Interrogatory 16. State whether or not there was ever at any time any controversy about the territory within which the Consolidated Tank Line Company could operate and the Waters-Pierce Oil Company could operate, and if so, state the part taken by you in the controversy, and state the result thereof, and how it was determined.

Answer. I never recollect any, with the exception of some controversy at Joplin, Missouri, where I had established a station, and which afterwards was turned over to the Waters-Pierce Oil Company.

Interrogatory 17. While you were with the Consolidated Tank Line Company, state what plan was used by that concern to ascertain shipments of oil by competitors, and state what use was made of the knowledge thus acquired.

Judge STEDMAN: We object to that answer, because it is immaterial and irrelevant; and further, because what he or his company did can not be visited upon this defendant, this defendant not being shown to have had any connection with what they did in conducting their business, especially as the witness has just testified that his company and this defendant did not operate in the same territory.

960

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

Answer. We employed or used one of our employés to visit the freight platform of the various roads in Kansas City and take the names from barrels emanating from competitors, showing the consignee. Our traveling men in the territory where barrels were destined were notified and instructed to visit such consignees and endeavor, even if a cut in price was necessary, in order to secure their future business, to make such a cut.

Mr. LIGHTFOOT: We next offer in evidence the deposition of WILLIAM A. MORGAN, who resides in the city of Sedalia, Missouri.

Interrogatory 1. What is your name and where do you reside? How long have you resided there? Where did you live prior to that time?

Judge STEDMAN: Before any of the answers are read, we desire to make the objection that the matters concerning which this witness testifies occurred wholly in the State of Missouri, and therefore the laws of Texas not operating extra-territorially, can not affect these

transactions. It is suggested to me by associate counsel that these transactions occurred prior to the organization of this defendant, and prior to the enactment of the laws under which this prosecution is conducted.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

Answer. My name is William A. Morgan. I reside in Se-
961 dalia, Pettis County, Missouri, and have resided in Sedalia, Pettis County, Missouri, for the last three years. Prior to that time I lived in Kansas City, Missouri, and Kansas City, Kansas.

Interrogatory 2. State whether or not you have ever been connected with the Standard Oil Company; state when the connection began, and how long it continued, and the character of your employment.

Answer. I have been connected with the Standard Oil Company. My connection with the Standard Oil Company began on or about December 1st, 1898, and continued until October 18th, 1900. The character of my employment was traveling salesman and local station agent at Sedalia, Missouri.

Interrogatory 3. If you answer that you were traveling salesman for the Standard Oil Company, state the territory within which you traveled, and if you say that you afterwards became manager of the station at Sedalia, state what territory you had in that capacity.

Answer. While acting as traveling salesman for the Standard Oil Company, the territory within which I traveled was Sheridan, Carroll, Randolph, Howard, Pettis, Cooper and Benton Counties, all said counties being in the State of Missouri. While I was local Station Agent at Sedalia, my territory was the city of Sedalia, and local points close to Sedalia, being all the towns in Pettis, Benton and Cooper Counties.

Interrogatory 4. Under whom did you act under the Kansas City jurisdiction? And if you say that it was G. W. Mayer, state what his position was at that time.

Answer. Under the Kansas City jurisdiction, I acted under G. W. Mayer, whose position at that time was that of Manager at Kansas City, and had jurisdiction over all traveling salesmen and Station Agents for the Standard Oil Company in the Kansas City jurisdiction.

Interrogatory 5. When you were traveling salesman for the Stand-
ard Oil Company, did you ever come in competition with the
962 Waters-Pierce Oil Company? After you were stationed at Sedalia were you in competition there with the Waters-Pierce Oil Company?

Answer. When I was traveling salesman for the Standard Oil Company, I never came in competition with the Waters-Pierce Oil Company. After I was stationed at Sedalia, I was never in competition with the Waters-Pierce Oil Company.

Interrogatory 6. What was your territorial limit in operating from Sedalia, and what were your instructions as to going beyond that point, and by whom were the instructions given, and state whether or

not you ever on any occasion sold oil outside of this territory, and if so, state why you so sold, and what was the result of your sale?

Judge STEDMAN: May it please Your Honor, we interpose an objection to that part of the answer of this witness in which he testifies to instructions given *gim* by G. W. Mayer, for the reason that no instructions that Mayer gave could affect this defendant, with which he had no connection.

Mr. BRADY: He was a traveling salesman of the Standard Oil Company, and Mayer was the general manager.

The COURT: What is the number of the question?

Mr. BRADY: It is No. 6.

Mr. LIGHTFOOT: No. 4 shows who Mayer was.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

Answer. In operating from Sedalia my territorial limit was Pettis, Benton and Cooper Counties and as far South into Hickory County as Cross Timbers, also Howard, Randolph and Sheridan Counties. I was instructed not to go outside of this territory. The instructions were given by G. W. Mayer, Manager at Kansas City. On one or two occasions I went outside of this territory and sold oil, and I was reprimanded by the management at Kansas City for going
963 into Waters-Pierce Oil Company's territory.

Interrogatory 7. What action, if any, was taken by Mr. Mayer with reference to sales made by you outside of the territory assigned to you, and what statements did he make, if any, with reference to the character of the territory beyond your line within which you had by mistake made sales?

Judge STEDMAN: May it please Your Honor, we interpose the same objection to this answer that we did to the last preceding answer.

The COURT: Because of the statement of Mayer?

Judge STEDMAN: Yes, sir.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. Mr. Mayer stated to me that I would get no credit for sales made outside of the territory assigned to me, as the said territory belonged to the Waters-Pierce Oil Company.

Interrogatory 8. If you have stated that Mr. Mayer told you that the part of the territory in which you had made sales was the Waters-Pierce Oil Company's territory, state if you know the line recognized as the boundary line between the territory of the Waters-Pierce Oil Company and the Standard Oil Company's territory, and state how you acquired information concerning this line.

Judge STEDMAN: We object to the answer to the eighth interrogatory, because it appears that the facts concerning which the witness testifies are not within his knowledge, but were derived from other sources, and the testimony is therefore hearsay.

Mr. LIGHTFOOT: We will state, if Your Honor please, that we have not made any objections heretofore—I mean we have not urged

this point, but I now call attention to it, that we have given defendant notice to produce all maps, writings and documents of every kind showing any division line between the Standard Oil Company
964 and its allied interests, and the defendant has failed to offer such maps, documents, etc., and we offer that as secondary evidence.

Judge STEDMAN: I have never heard or understood that secondary evidence will take the place of hearsay.

The COURT: The objection is that it is hearsay?

Judge STEDMAN: That it is derived from other sources than his own knowledge, and is hearsay.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. I learned through my instructions from the management at Kansas City that the Waters-Pierce Oil Company's territory was the territory lying East of the East line of Cooper County and the East line of Howard County and the East line of Benton County and the South-east line of St. Clair County and all South of St. Clair County and all South of Benton County and all South of Cooper County with the exception of Cross Timbers, Northern part of Hickory County. The Waters-Pierce territory takes in practically everything in South-east and South-west Missouri and Central Missouri, up as far as the lines I have mentioned. The rest of the territory in Missouri belonged to the Standard Oil Company.

Interrogatory 9. While you were traveling salesman for the Standard Oil Company or in charge of the station at Sedalia, do you know of any orders being received for oil from points in what was recognized as the Waters-Pierce Oil Company's territory, and if so, state what disposition was made of these orders.

Answer. I know of no orders being received for oil from points in what was recognized as the Waters-Pierce Oil Company's territory at the time that I was traveling salesman of the Standard Oil Company or in charge of the station at Sedalia.

Interrogatory 10. State whether or not you received orders
965 from the Waters-Pierce Oil Company that had been sent in by merchants located inside of the Standard Oil Company's territory.

Answer. Not that I have any recollection of.

Interrogatory 11. When you were salesman for the Standard Oil Company, did you within your territory at any time come in contact with competition from the Waters-Pierce Oil Company?

Answer. I did not.

Interrogatory 12. Are you still working for the Standard Oil Company? If not, when did your employment by them cease, and in what business have you since been engaged?

Answer. I am not still working for the Standard Oil Company. My employment by them ceased October 18, 1900. Practically speaking, I have been selling oil since my connection with the Standard Oil Company ceased, for about five years. Practically speaking, I have been in the oil business ever since.

Interrogatory 13. If you say that you have been selling oil since

you left the Standard Oil Company, state whether or not you have met any competition from the Waters-Pierce Oil Company in the territory designated as the Standard Oil Company's territory while you were with that concern, or any competition from the Standard Oil Company in the territory that was designated as the Waters-Pierce Oil Company's during the time you were in the employ of the Standard Oil Company.

Answer. While selling oil for other companies since I left the Standard Oil Company, I have never met any competition from the Waters-Pierce Oil Company in the territory designated as the Standard Oil Company's territory while I was with that concern. Nor have I met with any competition from the Standard Oil Company in what was designated as the Waters-Pierce Oil Company's territory during the time I was in the employment of the Standard Oil Company.

966 Mr. LIGHTFOOT: We next offer in evidence the deposition of H. R. KNOLLENBERG, of the city of St. Louis, Missouri.

Interrogatory 1. What is your name and residence, and in what business are you engaged?

Answer. Herman R. Knollenberg. I am residing at 844 N. Kings-highway, just at present; will be there until the first of December, after that I will be living in Illinois. I am in the oil business. I think I will be there.

Interrogatory 2. State whether or not you ever had any connection with the Waters-Pierce Oil Company, and if so, what period such connection covered, and the character of your business?

Answer. I did. Well, I can't tell you just the year, but I think it was from 1893 to the latter part of 1898 or 1899; I don't remember just what time it was—either '98 or '99. Traveling salesman.

Interrogatory 3. If you have stated that you were traveling salesman for the Waters-Pierce Oil Company, state what territory you worked.

Judge STEDMAN: May it please Your Honor, I would like to interpose an objection to all of the testimony of this witness from this time on, for the reason that it appears that the matters concerning which he testifies all happened before the formation of the present Waters-Pierce Oil Company, and before the enactment of the laws under which this suit is being prosecuted, and further, because the transactions to which he testified occurred without the limits of the State of Texas, and are not cognizable by the courts of Texas.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

Answer. Well, the way I worked, part of the time I worked in Illinois and part of the time I worked in Missouri. When
967 I was in Illinois I covered territory that I had formerly covered when I was with the Vacuum Oil Company of Rochester.

Interrogatory 4. Within the territory in which you traveled, did you ever meet any competition from the Standard Oil Company?

Answer. No, sir.

Interrogatory 5. State if you ever found or saw in your territory any representative of the Standard Oil Company.

Answer. Not in Missouri—in Illinois I frequently would meet Standard Oil men.

Interrogatory 6. Did you have any knowledge of the division of the territory between the Standard Oil Company and the Waters-Pierce Oil Company, and if so, state what your information was, and from whom you acquired it?

Judge PENN: If the Court please, we object to all of the answer of the witness to No. 6, for the reason that said interrogatory is leading and suggests to the witness the answer desired, and for the reason, further, that said interrogatory assumes that there was a division of the territory between the Standard Oil Company and the Waters-Pierce Oil Company—a fact to which witness has not testified.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. The only information—the information that I had came to me from the fact that I was told not to go beyond certain limits in Missouri in soliciting business, and my restrictions were made by Mr. A. A. Lazar, who at that time was the Manager of the Missouri division of the Waters-Pierce Oil Company. Letters were given to me by Mr. Lazar from customers in the Missouri division who had written to the Standard Oil Company for prices. When those inquiries were made by customers of the Waters-Pierce Oil
968 Company, the letters were generally sent to the Waters-Pierce Oil Company divisions and the salesman's attention was called to it and he was supposed to go there and see what trouble there was and adjust it and return them as customers so it would not get to any outside concern—so they would not give their patronage to any outside concern. I received not what you might call absolute knowledge of the fact, only as it was given to me by the Manager of the division, he telling me what parts of Missouri the Waters-Pierce company did business and the portions in which they did not do business; and at one time he showed me by a map of Missouri, which was hanging on the wall, about the limits of the territory of each company. That's about all, I guess.

(Interrogatories 7, 8 and 9 and answers omitted.)

Interrogatory 10. Under what character of contract were you working for the Vacuum Oil Company, and if you say you were working under a yearly contract, state whether or not you worked out the year, and if you did not, state for whom you began to work before the end of the year, and state the circumstances — you left the Vacuum Oil Company?

Judge STEDMAN: We object to that upon the ground of immateriality and irrelevancy, and further, because the matter testified

about occurred long before the creation of the present Waters-Pierce Oil Company and long before the enactment of the statutes under which this suit is being prosecuted.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. I remember one morning, Mr. E. J. Sugru, who at that time was the manager of this district for the Vacuum Oil Company, of Rochester, N. Y.—one morning, while we were all sitting in the office, a gentleman came in, presented *their* credentials and proceeded immediately to check up the Vacuum Oil Company. That evening or the next morning, was told by Mr. Sugru that the
969 business would be transferred to the Standard Oil Company.

I had a yearly contract with the Vacuum Oil Company of Rochester, N. Y., which had eight or ten months of unexpired time. There was nothing said to me about working out my unexpired contract, but my services were simply transferred to Waters-Pierce Oil Company—they afterwards dividing my time as they saw fit, soliciting trade in Illinois and Missouri.

Interrogatory 11. If in answer to the preceding question you state that you had a yearly contract with the Vacuum Oil Company, but that the Standard Oil Company and the Waters-Pierce Oil Company began marketing Vacuum oils and that you were transferred to the Waters-Pierce Oil Company, state when this transfer took place, and state what your instructions were as to the balance of your contract period.

Answer. Well, as near as I can remember, the transfer took place in April, 1893, to the best of my knowledge and belief, and the books, papers and everything that was in the office of the Vacuum Oil Company was transferred to the Waters-Pierce Oil Company, who had at that time offices in the Odd Fellows Building. Nothing was said to me at that time about the balance on my contract, but I continued to work and did as I was told covering territory to which I was assigned from time to time. My salary checks always came from the Waters-Pierce Oil Company.

Interrogatory 12. After the Vacuum Oil Company quit business, state where you worked, and state by whom your salary was paid, and state whether or not it was according to the contract made with the Vacuum Oil Company.

Answer. Well, after the Vacuum Oil Company was absorbed by the Standard Oil Company I continued working for the Waters-Pierce Oil Company, they from time to time assigning me to territory in Illinois covered by the Standard Oil Company, and in which I solicited business while I was employed by the Vacuum
970 Oil Company. My salary came to me regularly in checks from the Missouri division of the Waters-Pierce Oil Company, having at no time received any compensation directly from the Standard Oil Company.

Interrogatory 13. If in answer to the preceding question you have said that you worked in both Missouri and Illinois, or if that be the case, state to whom you made reports of business done in Illinois, and

state to whom reports were made as to the remainder of the business done by you.

Answer. When I made trips in Illinois soliciting business my daily reports were sent to the Standard Oil Company's office at East St. Louis, Illinois. When I solicited business in Missouri, the reports were sent to the Waters-Pierce Oil Company.

Interrogatory 14. How did you acquire information of the transfer of the Vacuum Oil Company to the Standard Oil Company and Waters-Pierce Oil Company?

Judge STEDMAN: We object to that, because it appears that the witness was informed by somebody else of this transfer, and is merely relating or detailing hearsay.

The COURT: The objection to the answer to the fourteenth interrogatory is sustained to all of the answer except the first two sentences.

Judge STEDMAN: We except.

Answer. The first information that I had of that, as I said before, was given to me by Mr. E. J. Sugru, who at that time was the district manager of the Vacuum Oil Company, and after going with the Waters-Pierce Oil Company I was told to continue soliciting the class of trade that I had solicited when I worked for the Vacuum Oil Company.

(Interrogatory 15 and answer omitted.)

Interrogatory 16. State whether or not any of the other employés of the Vacuum Oil Company became connected with the
971 Standard Oil Company or the Waters-Pierce Oil Company, and if so, state who they were.

Answer. I can't say that I know from my own personal knowledge, I did not meet any of the men who had formerly traveled for the Vacuum Oil Company until several years after the transfer had been made and do not remember of having ever asked the gentlemen whether or not they had been retained by the Standard interests. The men who worked for the Vacuum Oil Company that traveled in the territory adjoining mine I very seldom met, only when they would come to the city and I would meet them in the office of the Vacuum Oil Company. To the best of my knowledge and belief, I was the only one who was retained by the Waters-Pierce Oil Company to work in the territory which I had formerly covered while employed by the Vacuum Oil Company.

Mr. ALLEN: We next offer the evidence of T. R. HOPKINS.

Judge STEDMAN: We object to this testimony as a whole on the ground that the witness' testimony refers to matters occurring without the limits of the State of Texas, in other States, and having no connection with the matters involved in this suit.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

Interrogatory 1. What is your name, where do you live, and in what business are you engaged? Have you ever been connected with

the Waters-Pierce Oil Company? If so, at what place, during what period and in what capacity?

Answer. My name is T. R. Hopkins. I live in Lawrence County, Missouri. I am engaged in farming. I was connected with the Waters-Pierce Oil Company, in the capacity of Agent, at Seneca, Missouri, Joplin, Missouri, Webb City, Missouri, and Pierce City, Missouri, from 1887 to 1903.

972 Interrogatory 2. If you say that you were an employé of the Waters-Pierce Oil Company, state under whom you worked?

Answer. I worked under A. M. Finlay, A. H. Lasar, and C. L. Ackert.

Interrogatory 3. If in answer to the last question you say that you worked under A. M. Finlay, state what his position was, and if you say that you subsequently worked under A. A. Lasar and C. L. ——, state the positions respectively held by them.

Answer. They were Managers of the Missouri division of the Waters-Pierce Oil Company.

Interrogatory 4. State whether or not you recall the circumstance of the company getting into some character of controversy with the State of Texas about 1900, state what, if anything, occurred about that time with reference to the discharge and reinstallment of employés, and what action concerning this matter was then taken.

Answer. I remember the controversy with the State of Texas. I received a letter discharging me, and in same mail I received a letter hiring me over again.

Interrogatory 5. If in answer to the last interrogatory you state that you were discharged and were re-employed, state how long between your discharge and your re-employment, and state whether or not you were checked up when you were discharged, and state what change took place in your business, and in the duties performed by you, as the result of the discharge and re-employment.

Answer. In same mail. Was not checked up. No change took place in my business, nor in my duties, as a result of the discharge and re-employment.

Interrogatory 6. State what change in your office was made, and what change, if any, in the stationery used by you, in the form or manner of carrying on business. State if you used the same

973 tanks after as before your discharge and re-employment, and had the same customers, and if you made any change in your books. Did you open a new set of books with your local customers, or did the accounts continue without any interruption?

Answer. None at the time. But in a short time I received a rubber stamp and pad, and I stamped on letter heads, "Incorporated under the laws of the State of Missouri in 1900."

Interrogatory 7. State specifically what changes were made as the result of this discharge and re-employment.

Answer. None at all.

Interrogatory 8. If you have stated that you were located at Webb City, Missouri, at any time during your employment by the Waters-Pierce Oil Company, state whether or not you met any competition there from the Standard Oil Company?

Answer. None.

Interrogatory 9. How close was Webb City from the Kansas line? State whether or not you sold any oil over the line in Kansas, and if you say you did not sell any oil over there, state by whom sales of oil were made in Kansas, and state why you did not make sales there.

Answer. Webb City is about sixteen miles from the Kansas line. I did not sell any oil over the line in Kansas, because I was instructed to not invade the Standard's territory. The Standard Oil Company sold oil over there.

Interrogatory 10. State whether or not at any time during your connection with the Waters-Pierce Oil Company you met the Standard Oil Company in competition in the sale of oil.

Answer. No, I did not.

Interrogatory 11. During the period that you worked for the Waters-Pierce Oil Company, state whether or not you had any occasion to, and did, ask for any instructions or directions as to whether you should sell oil outside of the Waters-Pierce Oil
974 Company's territory, and if so, state of whom you sought the instructions and directions you received.

Answer. I had occasion in two instances to ask for instructions as to selling oil outside of the Waters-Pierce Oil Company's territory, but I did not ask for them. I sold once outside of the territory, but was told by Mr. Lasar, Manager, to not do so any more.

Interrogatory 12. If in answer to the foregoing question you have answered that while you were at Seneca application was made to you for the purchase of a barrel of oil by some one outside of your territory and you asked Mr. Lasar about it, state what instructions he gave you concerning the matter, and state if he gave the reasons for his instructions and what those reasons as given were?

Answer. I do not remember about receiving an application for a barrel of oil while in Seneca, by some one outside of my territory, but I do remember while in Seneca that Mr. Lasar told me very emphatically to not sell any oil in the Standard's territory, for if the Standard Company found it out, we would have to make up the difference between what we were selling at and what the Standard was selling at.

Interrogatory 13. State whether or not you knew the territory claimed respectively by the Standard Oil Company and the Waters-Pierce Oil Company, and if you do know, state how you got the information, and state where the line between the two territories run.

Answer. I knew at the time I was in the employ of the Waters-Pierce Oil Company, but I do not now remember just where the lines run. I got the information from a map of the Missouri division of the Waters-Pierce Oil Company that Mr. Lasar showed me. I had no occasion to use it, except the South-west part of Missouri, where I was located, and a portion of the Indian Territory. The only line I know positively about now is the State line between Missouri and Kansas.

975 Interrogatory 14. State whether or not during the time you were connected with the Waters-Pierce Oil Company you

had to meet competition from the Standard Oil Company within your territory.

Answer. No.

Interrogatory 15. Were you familiar with the price of oil in Carthage, Joplin, Webb City and Springfield as compared with the prices within your territory? If so, state what the prices were as compared with each other.

Judge STEDMAN: We interpose an objection to this answer upon the ground that it is immaterial and irrelevant.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. While in Pierce City, our prices were always from one and a half to three cents higher than prices in Carthage, Joplin, Webb City and Springfield.

Interrogatory 16. If in answer to the preceding question you have stated that the price in the contiguous territory was less than in your territory, state the reason for this difference, and state how you know the reason therefor.

Judge STEDMAN: We object to that because it is immaterial and irrelevant.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. They had competition. I know this, because I visited the dealers in those places, and also, Mr. Ackert told me the same thing.

Interrogatory 17. If in answer to the preceding question you have said that you talked with one of the officers of the Waters-Pierce Oil Company with reference to the matter of prices, state who said officer was, and what was said by him with reference to the matter.

976 Judge STEDMAN: We object to this answer for the same reason, that it is immaterial and irrelevant and does not tend to establish any issue in this case, in that the fact that the Waters-Pierce Oil Company met competition at certain places and did not have to meet competition at other places does not tend to establish either the alleged fact of its admission under improper circumstances into Texas, or the alleged fact of its being a party to a pool, trust, or combination.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. Manager Ackert. He said the reason my prices were higher was because I had no competition in my territory.

Interrogatory 18. State whether or not you ever received any orders for oil while you were agent for the Waters-Pierce Oil Company from merchants in the territory recognized as the Standard Oil Company's territory.

Answer. Yes.

Interrogatory 19. If in answer to the preceding question you say that you did receive such orders, state whether or not you filled them, and if not, state what was done with them, and why, and if you say

that you were acting under instructions in what you did, state from whom the instructions emanated.

Answer. I did receive such orders, but I did not fill them, except in one instance. I forwarded the orders to the office of the Waters-Pierce Oil Company at St. Louis, who sent them to the Standard Oil Company. I did this because I was instructed to do so, by Managers Ackert and Lasar. They told me to not fill any orders from the Standard's territory.

Interrogatory 20. State whether or not while working for the Waters-Pierce Oil Company you received any orders that had been sent from your territory to the Standard Oil Company, and if
977 so, state through what agency you received these orders. If you recall any special instance of such an order, state who made it and by whom it was forwarded to you, and what you did with reference to it.

Answer. Yes. J. R. Williams of Monett, Missouri, sent an order to the Standard Oil Company at Kansas City, Missouri. It was forwarded to the Waters-Pierce Oil Company at St. Louis, who sent it to me, and I filled the order.

Mr. ALLEN: We next offer in evidence the questions to and answers of Robert H. McNall.

(Thereupon the deposition of Robert H. McNall, taken in New York City, was read.)

ROBERT H. MCNALL, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. LIGHTFOOT:

Q. What is your name?
A. Robert H. McNall.
Q. Where do you live, Mr. McNall?
A. Greenwich, Connecticut.
Q. Are you in business in New York?
A. I am.
Q. How long have you been in business here?
A. Something over twenty years—about twenty-two years, I think.
Q. What kind of business are you in?
A. Oil business.
Q. Where is your office?
A. 26 Broadway.
Q. New York?
A. New York City.

Q. Has your office been located at that point during the
978 twenty years you have been in business here?

A. Well, I have been in that building for that time—part of the time I was in the rear of it.

Q. Who did you begin with?
A. The Pratt Manufacturing Company.
Q. How long did you work with them?
A. About ten years.

Q. Then what company did you go with?

A. Well, I might explain: A part of that time the name of the company was changed; it was the Pratt Manufacturing Company, and afterwards the Standard Oil Company, Pratt Works.

Q. Afterwards changed its name to the Standard Oil Company, Pratt Works?

A. Yes, sir.

Q. When was that—about when?

A. I couldn't tell you that.

Q. Well, approximate it?

A. About six years after——

Q. (Interrupting.) About what year was that, Mr. McNall?

A. Well, about 1891, that is as near as I can tell.

Q. About 1891 the name of the concern was changed to the Standard Oil Company, Pratt Works?

A. Yes, sir.

Q. Well, how long did you remain in their employ?

A. If that date is correct, about four years.

Q. Until about 1895?

A. About 1895.

Q. What employment did you have after that time?

A. I went with Mr. H. M. Tilford.

Q. Did he have an office in the same building?

A. Yes.

979 Q. Well, in what capacity did you go with him?

A. Well, assistant, I should say.

Q. As assistant to Mr. H. M. Tilford?

A. Assistant to Mr. H. M. Tilford.

(Portion heretofore introduced omitted.)

Q. Now how long did you remain there with Mr. Tilford as his assistant?

A. About five years.

Q. Until what time—about what time?

A. Some time the year 1900.

Q. Do you remember what time of the year 1900?

A. No, I think it was the late Spring or nearly Summer.

Q. Of 1900?

A. Yes, sir.

Q. And then where did you go, or what connection did you form?

A. I was employed at that time by the Waters-Pierce Oil Company.

Q. In what capacity, Mr. McNall?

A. To look after such business as they might give me in New York City.

Q. Did you have any title?

A. I had a title then or later on as Commercial Agent.

Q. Where did you have your office during the time you were employed as Commercial Agent of the Waters-Pierce Oil Company?

A. I occupied a desk in Mr. Tilford's office.

Q. Which Tilford?

A. Mr. H. M. Tilford.

Q. Now, there are two of the Mr. Tilfords, are there not?
A. Yes.
Q. What is the other Tilford's name?
A. W. H. Tilford.
Q. And where is their offices with respect to each other?
980 A. Adjoining.
Q. Mr. W. H. Tilford's office adjoins Mr. H. M. Tilford's office?
A. Well, there is a room between, but near each other.
Q. Well, when you were employed by the Waters-Pierce Oil Company did you keep your office in Mr. Tilford's office?
A. Yes, sir.
Q. How long did you keep your office there?
A. Until the Spring of 1906.
Q. The Spring of 1906. Had the Waters-Pierce Oil Company prior to the time of your employment as Commercial Agent in the Spring of 1900 had or maintained any office at 26 Broadway?
A. Not that I know of.
Q. How did you get your mail, Mr. McNall?—that is, to what company in New York was it addressed?
A. 75 New Street.
Q. Well, now, where is 75 New Street, with reference to 26 Broadway?
A. It is the rear.
Q. The rear entrance to 26 Broadway?
A. Yes, sir, 75 New Street is the rear of 26 Broadway, or 26 Broadway is the rear of 75 New.
Q. Now, prior to your appointment as Commercial Agent of the Waters-Pierce Oil Company what were your duties at 26 Broadway, in a general way?
A. Well, I think that shortly before—I don't think I got my title at the same time I entered the employ of the Waters-Pierce Oil Company.
Q. I am speaking now immediately before you entered the employ of the Waters-Pierce Oil Company; in a general way, what were your duties?
A. Assisting Mr. Tilford with such matters as he had to look after and gave me to do for him.
Q. Well, what did these matters cover in a general way, Mr. McNall?
981 A. Correspondence, generally.
Q. With the various companies that he was connected with?
A. Yes, sir.
Q. Well, at that time didn't he hold some position with the Waters-Pierce Oil Company?
A. I don't know.
Q. Didn't you have any correspondence with the Waters-Pierce Oil Company for him before you entered the employ of the Waters-Pierce Oil Company?
A. Well, I don't remember, sir.
Q. You don't recall that you had any correspondence with the

Waters-Pierce Oil Company for him before you entered the employ of the Waters-Pierce Oil Company?

A. No, I do not.

Q. Well, I will ask you now if he wasn't a director in the Waters-Pierce Oil Company, the old Waters-Pierce Oil Company that was dissolved in May, 1900?

A. I don't know.

Q. You have no information on that subject?

A. None at all.

Q. Who employed you, Mr. McNall, as Commercial—well, who employed you to go with the Waters-Pierce Oil Company?

A. Mr. H. C. Pierce.

Q. Did he made the arrangements for your office there at 26 Broadway?

A. Well, he instructed me that would be where I would be located.

Q. He instructed you that you should be located at 26 Broadway?

A. Yes, sir.

Q. In Mr. Tilford's room?

A. Yes, sir.

Q. Mr. Tilford made no objection to the arrangement, did he?

982 A. None that I know of.

Q. Did you consult with Mr. Tilford about keeping your desk in his room and sharing his office with him as an employé of the Waters-Pierce Oil Company?

A. No, sir.

Q. Well he did make that arrangement?

A. I don't know.

Q. He never said anything to you about it, then?

A. No, sir.

Q. Did you have a sign out there at all?

A. My name was on the door.

Q. What was your title on the door?

A. No title.

Q. You didn't have the title of Commercial Agent placed on the door?

A. No.

Q. Just R. H. McNall?

A. Just R. H. McNall.

Q. Was that on his office door?

A. Yes, it was on the general—not on his particular office door, it was on the door that you would enter the office from.

Q. He never made any objection to you staying there and sharing his office with him?

A. None to me.

Q. Who paid the rent?

A. I don't know.

Q. Do you know whether any rent was ever paid or not?

A. I do not.

Q. Was any bill ever rendered to you for any rent for that office?

A. No.

Q. Now, what were your duties, Mr. McNall, as an employé
983 of the Waters-Pierce Oil Company at 26 Broadway?

A. Transact such matters as the home office might send on to me.

Q. Well, what did those matters cover?

A. Buying supplies and looking after shipments; the general office work of a business of that kind; custom-house work.

Q. D u you buy the supplies for the Waters-Pierce Oil Company?

A. I bought some of them.

Q. What kind of supplies did you buy?

A. I bought oil, pipe and general refinery supplies. You don't care to be more specific, do you?

Q. Yes, I would like you to be specific.

A. Well, valves, files, a thousand and one things that go to make up a manufacturing business.

Q. Well, now, you bought all of the petroleum supplies for the Waters-Pierce Oil Company?

A. I bought such as they directed me to buy.

Q. Well, what did that cover?

A. Lubricating oils, refined oils in cases, cans, napthas in packages.

Q. Who did you buy those supplies from, Mr. McNall?

A. Which?

Q. The supplies of oils?

A. The supplies of some oil I purchased from the Standard Oil Company, some from the Atlantic Refining Company, some from Swan & Finch Company. There are other oils that I can't remember whom I did buy from, now.

Q. Well, has the Swan & Finch Company a representative at 26 Broadway?

A. No, sir; that is, I don't know that they have.

Q. Where are they located?

A. On Maiden Lane, New York City.

Q. What character of oils did you buy from them?

984 A. Lubricating oils.

Q. Are they connected with the Standard Oil Company?

A. I don't know.

Q. The Atlantic Refining Company, does it have a representative at 26 Broadway?

A. Yes, sir.

Q. Who was its representative?

A. I don't remember who the representative was there.

Q. Well, do you know who is the representative now?

A. No, I don't know whether they have one there or not.

Q. Well, they did have a representative there during the time that you were employed with the Waters-Pierce Oil Company?

A. Yes.

Q. And the Atlantic Refining Company, do you know what relation it bears to the Standard Oil Company?

A. No, I don't.

Q. Well, it is connected in some way, is it not?

A. I don't know.

Q. Have you any information on that point at all?
A. None at all.
Q. You have never been advised or had any information as to its connections with 26 Broadway and the management there?
A. No, sir.
Q. Now, what character of oils did you get from the Atlantic Refining Company?
A. Crude petroleum.
Q. What did you do with that oil?
A. Shipped it to Mexico.
Q. Now, in addition to your duties in purchasing supplies, Mr. McNall, had you no other duties?
985 A. Yes, I took care of other matters that they might send forward to me.
Q. Well, what matters, now?—what other matters did you take care of?
A. Well, shipping these goods that I bought; custom-house work; and very likely other matters that I can't recall at the present time.
Q. There are several departments there at 26 Broadway, is there not, with the Standard Oil Company?
A. They have different offices there; I don't know whether they distinguish them as departments or not.
Q. I ask you whether or not there is a Marine Oil Department of the Standard Oil Company?
A. I believe there is.
Q. Who is at the head of the Marine Oil Department?
A. I don't know.
Q. Do you know whether Mr. Bedford is or not?
A. Mr. Bedford is connected with it; C. E. Bedford, I think, are the initials.
Q. Is there a Lubricating Department there?
A. I don't know whether it is called department or not. There is a Lubricating Oil Sales office, any way.
Q. Go ahead and state, Mr. McNall, how that business is organized over there of the Standard Oil Company, the different departments in which they have their business organized there?
A. I don't know, sir; I can not tell.
Q. Now, Mr. McNall, you did business there with the various concerns located at 26 Broadway, did you not, during the time that you were in the employ of the Waters-Pierce Oil Company?
A. I have been in some of the offices at 26 Broadway.
Q. That is what I mean. Now, what offices have you had business with during the time that you were Commercial Agent or in
986 the employ of the Waters-Pierce Oil Company?
A. With the Lubricating oils——
Q. Who did you have that business with?
A. Usually with the clerks in the office.
Q. Who is the head of the office?
A. I can not specifically answer; I don't know who is the head.
Q. Who was during that time?
A. Or was, either, for that matter; I know that Mr. Silas H. Paine was in the office, and other gentlemen.

Q. What other business have you had there, with whatever concerns?

A. With the Export Sales Office.

Q. Who was in charge of that, or was supposed to be in authority?

A. Well, I don't know who is in charge of it.

Q. Who did you transact your business with?

A. With one of the clerks; I don't recall which one now; there was very little business to attend to there.

Q. You don't remember his name?

A. No, I don't remember who it was; I know most of the young men, but I don't remember which I transacted it with.

Q. The office was located at 26 Broadway, was it not?

A. Yes, sir.

Q. Whose name was on the door, then, of the Export Sales Department office?

A. I could not answer that; I don't know.

Q. Well, what other department have you had business with or concern located at 26 Broadway?

A. With the Marine Oil.

Q. Who is in charge of the Marine Oil Department?

A. I don't know who is in charge of it.

Q. Well, who was in charge of it?

987 A. I don't know who was in charge of it.

Q. Who did you transact your business with, then?

A. I don't know the name of the party that I did transact some business with.

Q. You can not recall the names of any parties in the Marine Oil Department of the Standard Oil Company at 26 Broadway that you transacted business with during the time that you were so in the employ of the Waters-Pierce Oil Company?

A. No, sir.

Q. Now, what other concerns located at 26 Broadway did you have business dealings with?

A. There was a Purchasing Office of the Standard Oil Company.

Q. Who was in charge of that?

A. I don't know who was in charge of it. I don't really know who was responsible for it.

Q. Who did you have your business dealings with in that office?

A. With a clerk by the name of Porter, I think.

Q. Did you never learn who was in charge of that office there or at the head of it?

A. No.

Q. Well, name some other concern located there that you had business transactions with for the Waters-Pierce Oil Company?

A. I don't remember any others at the present moment.

Q. Is there a Statistical Department there?

A. I don't know.

Q. Do you know Mr. W. E. Bemis?

A. I know him, yes.

Q. What is his business?

A. He is in the export business, I believe.

Q. In the export business?
988 A. Yes, sir.
Q. At 26 Broadway?
A. Yes, sir.
Q. Is he not also connected, or was connected, with the Statistical Department?
A. I don't know.
Q. How far is his office from yours now or at that time?
A. You are speaking of the entire period?
Q. Yes.
A. On the same floor.
Q. Does it not adjoin yours?
A. Is this W. E. Bemis's office?
Q. Yes, W. E. Bemis?
A. Yes, his office is on the same floor and next to the suite of offices which——
Q. (Interrupting.) Which you occupy?
A. One of which I occupy.
Q. You pass right by his door going into your office, do you not?
A. Yes.
Q. And did so during all that time?
A. Yes, sir.
Q. Did you not pass through the department in which his clerks are at work in reaching your office?
A. No.
Q. Did you ever have any business transactions with Mr. Bemis while you were there?
A. No.
Q. None whatever?
A. No.
Q. Did you ever have any transactions with his department?
A. No.
989 Q. Or his office?
A. No.
Q. Or the business over which he presides?
A. I don't remember, no.
Q. Are there any committees or were there any committees in charge of any business there at 26 Broadway during the time that you have been there, Mr. McNall?
A. I don't know.
Q. You were never present at any committee meetings?
A. No, sir.
Q. Now, can you recall any other concerns that you had any business transaction with for the Waters-Pierce Oil Company at 26 Broadway?
A. I don't recall any others, no.
Q. Then, am I to understand from your testimony that you were employed as the representative and commercial agent of the Waters-Pierce Oil Company from May, 1900, or the early Spring of 1900, up until the Spring of 1906, and that you purchased supplies from parties located at 26 Broadway, and had general business transac-

tions there, and never knew or learned the names of the parties with whom you had dealings?—is that your testimony?

A. Well, I knew some of the names.

Q. Who are they?

A. In the Marine Oil Department, I can not recall any of the names except Mr. Bedford, who was in the offices.

Q. Did you receive any character of reports from the Waters-Pierce Oil Company during the period that you were employed by them?

A. Yes.

Q. What kind of reports, now, did you receive from them?

A. Sales reports, various sales reports.

Q. Now, what did these sales reports cover?

990 A. Sales of petroleum products in——

Q. (Interrupting.) Where?

A. In St. Louis and other points where the Waters-Pierce Oil Company did business.

Q. At what points did they do business?

A. Missouri, Arkansas, Louisiana, Texas, in the Indian and Oklahoma Territories.

Q. In the Republic of Mexico?

A. And old Mexico.

Q. Now, then, did these reports of sales, is that refined oil or all characters of oil?

A. I think it covers refined oil and lubricating oil and naphthas.

Q. They reported to you, then, their gross sales of those oils in that territory that you have mentioned?

A. Yes, sir.

Q. Well, now, what other reports did they make to you?

A. Cash reports.

Q. Now, the reports of the sales of oils, how often did you receive those reports, Mr. McNall?

A. At different periods; once a month; once in six months; once a year.

Q. Then you received a monthly report and then at the end of the six months' period you received a semi-annual report, did you?

A. Yes, sir.

Q. And then, at the end of the year, you received an annual report?

A. Yes, sir.

Q. Covering the entire sales for the year of oils by the Waters-Pierce Oil Company in that territory?

A. That is correct.

Q. Well, did these reports show competitive sales also?

991 A. No, those reports didn't show competitive sales.

Q. Did you receive any such reports?

A. I did a report showing—(pausing) I can not say that I received any reports showing competitive sales.

Q. You are not positive about that?

A. No.

Q. You don't say that you didn't receive such a report, do you, now?

A. No, I don't say that I didn't receive such a report.

Q. Now, what did the cash report show, Mr. McNall?

A. The cash report showed receipts of cash.

Q. Where?

A. At, I think, the main station points, as they are known, and bank balances.

Q. Covering the business of the Waters-Pierce Oil Company?

A. Yes, the business of the Waters-Pierce Oil Company.

Q. How often did you receive such reports?

A. I could not say; it was irregular.

Q. Well, to refresh your memory, I will ask you if you did receive a daily cash report?

A. I don't think that I received a daily cash report; I think there was a daily cash report, but I don't think that I received it regularly.

Q. What is your recollection about that?

A. I received cash reports, but I don't think that I received them regularly.

Q. Well, now, what other reports did you receive?

A. I don't recall any other than sales reports; there may have been others.

Q. Did you receive a construction report?

A. I don't remember receiving any construction reports;

992 I don't know what you mean by "construction reports."

Q. Well, a report showing the construction of buildings and the erection of tank stations and the equipment of plants and so on, made or in course of construction by the Waters-Pierce Oil Company. Did you receive any such reports as that?

A. I believe I did.

Q. Well, can you recall any other reports that you received?

A. No, I don't now recall any other reports.

Q. Did you receive any other reports of oils delivered to steamboats and vessels at the ports, marine oil reports?

A. I don't remember receiving such reports.

Q. Do you say that you did not receive such reports?

A. No, I don't remember any such reports.

Q. How about the salary lists, the lists of salaries paid by the Waters-Pierce Oil Company to its officers?—did you receive any such lists as that?

A. What?

Q. Salary reports? (Last question repeated.)

A. Yes, I think I did receive salary reports.

Q. What did the salary reports show?

A. Salaries effective on January 1st.

Q. Of each year?

A. Of each year; I can not say that I received them yearly, but I think I remember of receiving such a report.

Q. Well, I will ask you to refresh your memory, Mr. McNall, whether or not you received a report showing deliveries of lubrica-

ing oils and refined oils and petroleums, merchandised to the marine trade by the Waters-Pierce Oil Company?

A. I don't remember such a report.

Q. Do you say that there was no such report sent to you?

993 A. No, I do not.

Q. Was there a report as to the sales and deliveries of naphthas and lubricating oils?

A. Yes, sir.

Q. Was there a report sent to you showing milk can deliveries and the sales of turpentine and fuel oil in the territory of the Waters-Pierce Oil Company?

A. I can not say whether that was a separate report or not; I think it was included in one.

Q. Did you have a monthly report of the delivery of wax candles and grease and so on?

A. Yes, sir.

Q. To refresh your memory, was there a report of comparative sales of barrels of fifty gallons each for a certain period as compared with the same period the year before, comparative statements?

A. Of what?

Q. Of oils?

A. Yes.

Q. Was there a statement showing the cost of barreling and marketing of oils by the Waters-Pierce Oil Company during certain months or a monthly statement of that kind showing the cost of barreling and marketing of oil?

A. For what period?

Q. At any period?

A. I think there was such a statement.

Q. What periods did it cover, Mr. McNall?

A. I don't remember.

Q. Do you know whether it was monthly, semi-annually, quarterly—what is your judgment and recollection about it?

A. As near as I can remember, it was six months—semi-annually.

994 Q. Semi-annually?

A. I am not positive that that is so.

Q. Did you receive any reports of the result of the conduct of the business of the Waters-Pierce Oil Company?

A. What result?

Q. Well, the result, the report of the results of the condition of the business?

A. I received a report showing the sales for certain periods, and whether they were an increase or decrease over the previous years; that was a part of the reports referred to.

Q. Did they show the prices at which the oils had been sold?

A. No, I don't remember. What is that question?

Q. Did they show the prices at which the oils had been sold, or did any report made to you show the prices at which the Waters-Pierce Oil Company sold their products?

A. No, I don't think any report covered that.

Q. Do you have any recollection about that matter?
A. That is my recollection only.
Q. Do you say that there was no such report sent to you showing the schedule of prices at which the Waters-Pierce Oil Company sold their oils and petroleum products at the different points in its territory?
A. Yes, I received a report showing their selling prices, if you please; I don't know whether they sold at those prices or not.
Q. You say you then received a report showing the selling prices at different points in the territory of the Waters-Pierce Oil Company; is that a fact?
A. I don't know whether at all points.
Q. What is your recollection about that?
A. They sent such a report on; how complete the report was, I can not say.
995 Q. What did the report of the result of the business show, Mr. McNall, that was sent to you?
A. What do you mean by the result of the business?
Q. Well, the report of the results, the sales and the comparative sales that you spoke of a little while ago?
A. Sometimes they showed gains and sometimes losses.
Q. What particular items did that report cover?
A. The number of barrels.
Q. The number of barrels of stuff sold?
A. Yes.
Q. And the prices received for it?
A. No; there was no mention made, I believe, of the prices received.
Q. Did it show the gross receipts?
A. No.
Q. Was any report of the dividends declared by the Waters-Pierce Oil Company made to you, Mr. McNall?
A. I was occasionally advised by the Secretary.
Q. What were you advised of?
A. And occasionally I got a letter stating what dividends were declared and the date.
Q. And the amount of the same?
A. Yes.
Q. Were you a stockholder in the Waters-Pierce Oil Company?
A. No.
Q. Now, why was that report sent to you?
A. I don't know.
Q. What did you do with it?
A. I filed it with my other letters.
Q. What did you do with the reports of the sales of refined oil that were sent to you?
996 A. Filed them.
Q. Where?
A. In my office.
Q. And the cash reports, what did you do with those?
A. They were filed in my office.

Q. And the construction reports?
A. Also filed with the other reports.
Q. All the reports, now, that were sent there were filed in your office?
A. Yes, sir.
Q. Did you do anything else with them, Mr. McNall?
A. After going over them myself and sometimes writing about them, but afterwards they were filed in my office.
Q. Did you show these reports or that correspondence to anybody else at 26 Broadway?
A. I think they occasionally saw them.
Q. Who saw them?
A. I can not recall now; sometimes a question would be asked and I would get the report out and show it.
Q. Mention some of the cases in which you have shown some of these reports to others than to yourself?
A. I don't know of any specific cases; I don't remember.
Q. Did you ever show the cash report to anybody?
A. No, I don't think I ever did; I don't remember it; it is possible, but I don't remember it.
Q. Well, the sales of refined oil or lubricating oil, did you ever show that report to anybody else?
A. Yes.
Q. Who to?
A. I don't remember.
997 Q. Can't you recall at all the name of any person that you ever showed it?
A. No, I do not recall.
Q. But your judgment is that you have shown it to parties there at 26 Broadway?
A. Yes, sir.
Q. Well, the salaries reports, did you show them to anybody?
A. I can not say; I don't remember.
Q. Well, what is your judgment about it?
A. I think not.
Q. Why was the report of salaries made to you, Mr. McNall?
A. I don't know.
Q. Did you call for any such report?
A. I don't remember calling for any such report.
Q. And they just sent it up there to you?
A. Yes, sir.
Q. Well, now, didn't you submit that report to some other parties at 26 Broadway for their information, Mr. McNall, during the time you were there?
A. No, I may have spoken to others.
Q. Who did you speak to about it?
A. When such a report would be received, and in going over it, I might find out from others what a certain position was paying at some other points, and in that way, that would be information that I was trying to get at.
Q. I don't understand that. Explain it a little more fully.

A. When such a report was received, I would go over it carefully, and I might have to send information to other places, what a certain place was paying.

Q. From whom?

998 A. From any of my friends.

Q. Can't you name any one of them that you ever sought such information from?

A. No, I don't remember.

Q. Did you ever show that report to Mr. H. M. Tilford?

A. I might have.

Q. What is your recollection about it?

A. I don't remember.

Q. Did you ever show it to Mr. W. H. Tilford?

A. I don't remember.

Q. I will ask you, Mr. McNall, to refresh your memory, if it was not the usual custom, and if you did not carry out the policy of submitting that report of salaries to other parties at 26 Broadway, and they were either approved or rejected, and you made a report on it to St. Louis?

A. No.

Q. You say that you never reported to the St. Louis office of the Waters-Pierce Oil Company any report on a salary list as submitted by them at all? Did you ever have any correspondence about it?

A. I think I have had correspondence about it; I can not recall it.

Q. What character of correspondence did you have, Mr. McNall, with the Waters-Pierce Oil Company, concerning the salaries paid to their officers?

A. I don't remember any particular correspondence in regard to it.

Q. And do you know why it was submitted to you, the salary list?

A. The lists—no, except with the other reports.

Q. Just to be filed in your office?

A. I don't know what they expected to be done with them.

Q. Did you ever inquire what they sent them to you for?

A. No.

Q. You never made any inquiry about it?

999 A. I have never made such inquiry as I can recall.

Q. These barreling and marketing reports, what did you do with them?

A. Filed them in my office.

Q. Did you show them to anybody?

A. Other people may have seen them; I can't tell.

Q. How did they see them? Would they come to your office and inspect these files, or would you exhibit them to them?

A. They may have seen them on my desk after going over them, and while I was going over them, or they might have seen them on the files.

Q. Did you object to anybody there in the office inspecting the reports that you received there from the Waters-Pierce Oil Company?

A. I don't know of any cases where they did.

Q. But you did show them those reports occasionally?

A. Yes, as business required.

Q. I will ask you if any letters were written in any of those departments there, say Mr. Bemis's office or Mr. Bedford's office or Mr. Silas H. Paine's office or any of those men connected there at 26 Broadway, and sent to your office to be signed by you for the Waters-Pierce Oil Company?

A. There were letters, I believe, in other offices besides my own.

Q. For the Waters-Pierce Company?

A. Addressed to the Waters-Pierce Company.

Q. Well, did you sign those letters, Mr. McNall?

A. I did.

Q. On what kind of stationery were they written?

A. On my own.

Q. On the Waters-Pierce Oil Company's stationery?

A. Yes, sir.

Q. Did you supply those departments with your stationery?

A. I did.

1000 Q. And what character of letters would they write?

A. There were only two offices that did that to my knowledge at the time.

Q. What two offices were they?

A. The lubricating oil and the purchasing of supplies.

Q. The lubricating oil department and the purchase of supplies department?

A. Yes, sir.

Q. Who was in charge of the Lubricating Oil Department?

A. I can not say who was in charge of the Lubricating Oil Department.

Q. But you know, as a matter of fact, that letters were written in that department and sent to your office and addressed to the Waters-Pierce Oil Company?

A. Yes, at my request.

Q. Yes, and you signed the letters?

A. Yes.

Q. Why were the letters not signed in those two departments?

A. It was information sent to me in regard to certain matters which I had to take up with the Lubricating Oil Department or Purchasing Department and I asked them if they had any objection to my making their replies instead of their writing to me and I in turn writing it, and they very kindly did that in some cases.

Q. After that you received letters from the Waters-Pierce Oil Company for those departments that were addressed to you, and you afterwards sent them to those departments?

A. In some cases, yes, sir.

Q. Did you send any letters or correspondence by you and addressed by you to any of the officers or departments at 26 Broadway?

A. Yes, sir.

Q. Now, what letters and correspondence did you send, Mr. McNall?

1001 A. Some letters regarding lubricating oil and some letters regarding the purchase of supplies.

Q. Please state whether or not the Waters-Pierce Oil Company

conducted all of their correspondence with parties at 26 Broadway through you by correspondence addressed to you?

A. I don't know.

Q. Well, they conducted a great deal of it that way, did they not?

A. Yes, sir.

Q. How often did you receive letters, Mr. McNall, for distribution in those offices there at 26 Broadway?

A. I never received letters for distribution.

Q. Well, that you did distribute?

A. Frequently.

Q. Well, about how often?

A. I think there was something in every mail.

Q. And you said that in two of those offices that you recall your stationery was provided and they addressed their communications to the Waters-Pierce Oil Company and sent the letters to your office to be signed by you?

A. Yes, sir.

Q. And you did sign them and conduct the correspondence between those offices and the Waters-Pierce Oil Company in your name; is that a fact?

A. I signed those letters.

Q. Why didn't they sign them, Mr. McNall?

A. It was information that was asked of me.

Q. Well, you received it from those departments, did you not?

A. Yes, sir.

Q. Now, to what business matters did that correspondence relate?

A. As far as lubricating oil was concerned, mostly in regard
1002 to orders—orders for shipment.

Q. Shipment where?

A. Shipments from points where they were receiving their supplies; their orders were placed with me, and then some question would arise as to the shipment.

Q. And those letters were sent to you and you sent them on to the departments?

A. I did in some cases.

Q. Well, I will ask you to refresh your memory, Mr. McNall, if you didn't write a letter to the St. Louis office of the Waters-Pierce Oil Company and direct them to make a carbon copy of the letters that they wrote to you, so that you might facilitate matters in sending the letters to the various departments there?

A. I don't remember the letters, but I received carbon copies.

Q. Of all the letters that you received?

A. Not all.

Q. What proportion, now, of the letters that you received were there carbon copies enclosed?

A. I don't remember.

Q. Well, what is your best judgment about it, Mr. McNall? Approximate it.

A. Well, if I approximate it, I might say half, but I am not sure that that is correct.

Q. Well, your judgment is that you received carbon copies of

about half of the letters that you received from the Waters-Pierce Oil Company?

A. Yes.

Q. Now, what did you do with the carbon copies?

A. Those that required information from other points I forwarded them and asked them to make a reply.

1003 Q. What do you mean by "other points"?

A. Well, if it was in regard to lubricating oil matters I would send it down to the Lubricating Oil Department, and get their reply.

Q. In the same building?

A. Yes.

Q. Mention some other instances?

A. Supplies, the same way.

Q. Did you send them to the supply department?

A. Yes, sir.

Q. Well, suppose it was about barreling and market reports?

A. I don't remember ever receiving such.

Q. Suppose it concerned salaries?

A. I don't remember ever receiving any about salaries.

Q. Well, about the dividends or cash payments?

A. I don't remember receiving any with any of those papers.

Q. Did they report to you the result of the business of Mexico also?

A. You mean the total sales?

Q. Yes.

A. I think that was included.

Q. The same character of reports concerning the business in the United States?

A. Similar reports.

Q. Similar reports were made about the Mexican business also?

A. Yes.

Q. Who did you purchase your supplies of lubricating oils from?

A. Of the lubricating oil office.

Q. Of the Standard Oil Company?

A. I assume it was of the Standard Oil Company.

Q. It was located in the same building?

A. Yes, sir.

Q. Who did you purchase your supplies of refined oil from?

1004 A. I don't remember purchasing any refined oil.

Q. Did you not state that orders for refined oil were sent to you?

A. Only occasionally.

Q. Where did you purchase that from whenever it was sent to you?

A. I think I remember occasional orders for refined oil, but I don't know where they were placed. I did buy some from the Export Department, I think; I am not clear.

Q. Did you ever buy any from any of the refineries in Texas?

A. No, I don't think I ever bought any from refineries in Texas.

Q. Did you buy it from the refinery at Whiting, Indiana?

A. I don't remember.

Q. Now, Mr. McNall, these letters that were written in the other departments that you have referred to, did they have any marks on them for identification, showing where they originated, or who wrote them?

A. When they came to my office?

Q. Yes, sir.

A. No, I think not.

Q. Did you put any on them yourself, showing where the letter originated?

A. Yes.

Q. Well, how would you mark them for identification?

A. The letters were not marked—I would like to correct that previous statement.

(Next to the last question repeated.)

A. Where the letter originated, they were not marked for that purpose.

Q. For what reason were they marked?

A. To show where I obtained my information.

Q. How would you mark those letters?

A. How?

Q. How?—yes.

A. With the initials of the party that was known, or the
1005 initials of the party from whom I got it or the office from which I got it.

Q. Now, give us an illustration, Mr. McNall.

A. On lubricating oil matters, information that I received from the office where Mr. Silas H. Paine is, I would mark it S. H. P.

Q. Where would you mark it?

A. In the upper left hand corner.

Q. Would you put the initials S. H. P. on the upper left hand corner of the letter and forward the letter then to the St. Louis office?

A. Yes, sir.

Q. You would sign it yourself and forward the letter there?

A. Yes, sir.

Q. Would that convey any information to the St. Louis office, those initials that you put on the upper left hand corner there?

A. I think they would know from that from whom I obtained the information.

Q. They would know from those initials from whom you obtained that information?

A. Yes, sir.

Q. Now, what is the initials of some of those that you put on letters that you can recall now?

A. S. H. P.

Q. Who did that stand for?

A. Silas H. Paine.

Q. Well, some others, now—give us some other illustrations.

A. Regarding the supplies, T. H. W.

Q. Who would that stand for?

A. T. H. Wheeler.

Q. Now, state some other examples, if you can recollect any?
A. There may have been others; I don't recall them.
Q. Well, now refresh your memory, have you ever placed W. E. B. on the corner of any letter?
1006 A. I don't remember.
Q. Do you know of anybody that W. E. B. would stand for there?
A. W. E. Bemis.
Q. How about H. M. T.?
A. That would be H. M. Tilford.
Q. Did you ever place his initials on a letter?
A. I don't remember; I may have.
Q. How about C. E. B.?
A. C. E. B., if I placed that on a letter, would be for C. E. Bedford.
Q. And W. H. T. would be for who?
A. Those are the initials of W. H. Tilford.
Q. And so it is your custom that when a letter was written in either one of those departments giving the information that you desired, that you would place the initials of the head of that department on the upper left hand corner and then sign the letter yourself and send it to the St. Louis office?
A. No, it covered only such information; I may have written the letter myself.
Q. But you have stated that you did receive letters written in the other departments?
A. Yes, with reference to lubricating oil business.
Q. Now, you have stated, Mr. McNall, that these letters conveyed the information that you had requested. I will ask you if you did receive letters from those departments or some departments or offices in 26 Broadway addressed to the Waters-Pierce Oil Company, in which they asked for information from the Waters-Pierce Oil Company through you?
A. There may have been such letters.
Q. What is your recollection of it?
A. I don't remember.
Q. Do you say there may have been such letters?
1007 A. I don't remember.
Q. Didn't you frequently receive requests for certain information from the Waters-Pierce Oil Company by the different officers and companies located at 26 Broadway?
A. I was occasionally asked questions of people located there.
Q. Did you receive letters asking for that information?
A. I don't remember.
Q. Did you receive statements of accounts that were due to any of the companies at 26 Broadway by the Waters-Pierce Oil Company?
A. I don't remember such.
Q. Well, I ask you to refresh your memory whether or not the Atlantic Refining Company or the Standard Oil Company of New York notified you when there was anything due them from the Waters-Pierce Oil Company for oils and supplies bought?
A. I don't remember; they may have done so.

Q. Was it your custom to write letters to the Waters-Pierce Oil Company notifying them of the balances due any company located at 26 Broadway and request them——

A. (Interrupting:) I would, if I received such information.

Q. Did they render their bills to you?

A. No.

Q. You didn't keep any accounts, then, in your office at all?

A. No.

(Evening Session.)

Direct Examination by Mr. ALLEN:

Q. Mr. McNall, you stated this morning that you were connected with the Waters-Pierce Oil Company from the early Spring, or the late Spring, or early Summer of 1900 up to the 1st of last year, 1906. Do you remember about what time in 1906 you severed your connection with the Waters-Pierce Oil Company?

A. The first of April, I think.

1008 Q. What company or individual have you been connected with since that time, Mr. McNall?

A. The Standard Oil Company of New York.

Q. Have you offices or a desk in the same suite of offices with them?

A. No, sir.

Q. What department are you in?

A. Export.

Q. Who has charge—who is the head of the Export Department?

A. I don't know who is the head of the Standard Oil Company of New York.

Q. Well, who employed you in that department? I understood you to say you didn't know who was the head of that department?

A. I was appointed by Mr. W. H. Tilford.

Q. Where are your offices now—your desk or your office—located with reference to the office that you occupied as Commercial Agent of the Waters-Pierce Oil Company?

A. I am now located on the seventh floor.

Q. A different floor?

A. In room 700.

Q. Where was your office prior to that—on what floor?

A. The twelfth.

Q. Is Mr. Tilford's office on the same floor that your office now is on?

A. No.

Q. It is now in a different place?

A. Yes, sir.

Q. You gave in considerable detail this morning your duties and what you did as Commercial Agent of the Waters-Pierce Oil Company. What business, or what are your duties now in a general way? I don't care, of course, specifically, nor to go into details; your duties now in the department you are in?

1009 A. In the general export business.

Q. In a general way what does that cover?

A. The supplying of certain countries with export oil.
Q. What countries?
A. Australia, New Zealand, and other points.
Q. How about Mexico?—anything to do with that?
A. Nothing to do with it.
Q. Do you know the territory in which the Standard Oil Company of New York does business? You gave us this morning—I mean in the United States—you gave us this morning the territory in which the Continental Oil Company and the Waters-Pierce Oil Company did business. What territory does the Standard Oil Company of New York do business in?
A. I don't know. I don't recall that I ever heard.
Q. Do you know which one of the Standard Oil Companies does, if it does, business in Louisiana East of the Mississippi River, whether it is the Standard Oil Company of Kentucky or the Standard Oil Company of Indiana?
A. I don't know.

(Portion of deposition omitted.)

Q. Who was Mr. Coombe?
A. He was an employé of the company at St. Louis.
Q. Of the Waters-Pierce Oil Company of St. Louis?
A. Yes sir.
Q. I have here a letter dated New York, March 24, 1904, addressed to Mr. S. Johnson, St. Louis, Missouri, purporting to be signed by you. Who was Mr. S. Johnson?
A. I believe an employé of the Waters-Pierce Oil Company of St. Louis.
Q. To refresh your memory, don't you know he was at the head of what is called the Lubricating Department?
A. I understood him to be, yes.

1010 Mr. ALLEN: We offer in evidence these letters, which it is agreed were identified by the witness R. H. McNall as having been signed by him.

(Thereupon the letters identified by the witness R. H. McNall were introduced in evidence, as follows:)

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jul- 29, 1903.
Answered 30.
A. J. H.

Waters Pierce Oil Co. Dividends.

NEW YORK, N. Y., *July* 27, 1903.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: Some time ago I asked you to advise me each time a dividend was declared by the W. P. O. Co. This you did for several

times, but I was unadvised of the last two or three dividends. Will you kindly arrange to send me a notice of the dividends as they are declared, and oblige,

Yours truly,

R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Aug. 6, 1903.
Answered "
J. P. Gruet.

Dividend Notices.

NEW YORK, N. Y., *August* 4, 1903.

1011 J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: Replying to your favor of the 30th ulto., beg to say, that it will be sufficient notice to me to have you attach to your cash report notices of dividends declared and paid. Not knowing that you had adopted this method of advising me as I seldom see the cash reports, I was not aware that you were attaching to your cash reports these notices.

Yours truly,

R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jan. 26, 1905.
Ans. ——
A. M. Finlay.

Changes in Mexico Salaries. File 2007.

NEW YORK, N. Y., *Jan. 24th,* 1905.

Mr. A. M. Finlay, Pres. Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I beg to acknowledge receipt of your favor of the 21st inst., enclosing list showing suggested changes in salaries of Mexico employés. I have been over this matter with Mr. Van Buren, and as I telegraphed you to-day he agrees with your suggestion that these changes be made effective as of January 1st.

Yours truly,

R. H. McNALL.

1012 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Personal.

Received
Jan. 18, 1905.
Ans. ——
A. M. Finlay.

File 2007. Salary Changes.

NEW YORK, N. Y., *Jan. 16th*, 1905.

A. M. Finlay, Esq., Pres. W. P. O. Co., St. Louis, Mo.

DEAR SIR: I beg to acknowledge receipt of your favor of the 4th inst., enclosing list of salary changes effective on Jan. 1st, 1905. I have gone over this carefully with Mr. Van Buren and he approves of the advances suggested on Form No. 408. Hereafter in sending similar lists to me, will you kindly send on a separate sheet Lubricating Oil Dept., managers and salesmen. I do not care to have the clerks of the Lubricating Dept. on a separate sheet, but simply the managers and salesmen.

Yours truly,

R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jun- 27, 1903.
Answered 27.
J. P. Gruet.

Salary List.

NEW YORK, N. Y., *June* 25, 1903.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: I am in receipt of your favor of the 23rd inst.,
1013 also salary list forwarded by express. In looking over same, I note ıe omissions and possibly there are other names omitted which ı would not know about. The omissions are those of Mr. H. C. Pierce, Mr. R. H. McNall and Mr. J. D. Johnson.

This list should include the names of all parties receiving over $50 per month. You also omit all of the Mexico salaries which I should like to have.

Yours truly,

R. H. McNALL.

S. H. P. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Mar. 30, 1903.
Answered 31.
E. S. H.

NEW YORK, N. Y., *March* 27, 1903.

Mr. A. P. Coombe, St. Louis, Mo.

DEAR SIR: Referring to deliveries made to the St. Louis Shovel Company, on account of contract held by the Swan & Finch Company of this City. The St. Louis parties have called attention to the disposition of the barrels in which oils are delivered to them. In order to enable the Swan & Finch Company to keep the accounts straight, it is requested that you kindly report to the writer all empty packages taken from the St. Louis Shovel Company. The latter have been advised that you will take these empties away, as deliveries are made.

Respectfully, R. H. McNALL.

1014 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Feb. 9, 1903.
Answered ——
J. P. Gruet, Jr.

Prices on Invoices for Marine Oils.

NEW YORK, *6th February*, 1903.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: Replying to your favor of the 3rd inst., in regard to your custom in billing Lubricating Oils by memorandum only to the Marine Oil Department, would say that this is true where the delivery is for contract oil, such as Marine Engine Oil and Marine Cylinder Oil, wherever other oils are delivered they should be billed at a price which will allow the Marine Oil Department 5 per cent. and still bill it to their customer at your market price at point of delivery. In other words, at the market price less 5 per cent., but the Marine Oil Department would prefer a net price.

Yours truly, R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Mar. 28, 1904.
Answered ——
E. S. H.
Cir. Letter.

Crude Scale Wax. Minimum Selling Prices.

NEW YORK, N. Y., *March* 24, 1904.

Mr. S. Johnson, St. Louis, Mo.

DEAR SIR: I suggest that your minimum selling prices on
1015 Crude Scale Wax, from this date until further advised, be as follows:

105	Melting Point	5 cents	per pound.
117/119	" (White or Yellow)...	5¼c.	" "
124/126	"	5¼c.	" "

These prices to be F. O. B. Cleveland, Whiting or New York, with freight added to destination, in less than carload lots, or delivered to all points East of the Mississippi River, if taken in full carload quantities. For delivery West of the Mississippi add excess freight.

While my suggestion is that your *minimum* prices be as above, at the same time, I do not want you to try to get anything above these prices, if by doing so any business is jeopardized.

On all orders received after this date, the billing price to you will be one-half cent below the above schedule.

Respectfully,

R. H. McNALL.

P. S.—For carload lots the above minimums can be applied as f. o. b. St. Louis.

W. E. B. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Sep. 1, 1902.
Answered "
J. P. Gruet.

NEW YORK, N. Y., *Aug.* 29, 1902.

Monthly Report Deliveries of Paraffine and Lub'g Oils and Average Prices Realized.

J. P. Gruet, Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I have mailed you, under separate cover, blank reports
15-L. Commencing with July 1, 1902, it is desired that you
1016 should send the writer a monthly statement, showing the total deliveries of Paraffine and Lubricating Oil, Wax,

Greases, etc., and the average prices realized on same. This report to take the place of any statement that you have been rendering, showing the average prices, and also to be rendered in place of your monthly report form 5-L, showing your total deliveries of Lub'g Oils, etc. In arriving at the average price, you should in all cases reduce the price to a bulk basis. In reducing the price obtained for shipments in bbls. to a bulk basis, please deduct from the prices realized the average cost per gallon of the barrel prepared and ready for shipment.

In reducing case oil to a bulk basis, please deduct from the prices realized the average cost per gallon including, of course, the cans, cases, faucets, etc. In regard to the bottles and small can specialty goods, it will be necessary for you to obtain an average cost, per gallon, for the cans, bottles, and the cost for filling and shipping same for each kind of package, and then deduct this average from the price, to reduce to a bulk basis. In all cases, the prices realized should be net f. o. b. in bulk refinery. The cost for freight, lighterage cartage, and other expenses of shipping or delivering to be deducted.

It has been impossible for me to have these forms prepared and this matter satisfactorily arranged earlier, but I am very anxious to have you commence rendering these reports, if possible, for the month of July and trust that you will be able to do so.

Kindly acknowledge receipt and oblige.

Yours truly, R. H. McNALL.

1017 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Nov. 20, 1902.
Answered 20.
J. P. Gruet.

NEW YORK, 18*th November*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: On September 19th I wrote Mr. Finlay giving him a list of deliveries to make to the Buffalo Bill's Wild West Show at various points, among them Gainesville, Texas: 4 Bbls., Stove Gasoline, delivery on October 9th. No delivery was made at this point, and I wired you yesterday in regard to the same, and received a reply this morning, stating that no delivery had been made. Will you kindly advise me why this delivery was not made, and oblige,

Yours truly, R. H. McNALL.

(Pencil memorandum:) Did not show at night and took no Gasoline at Gainesville 10/9.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Nov. 24, 1902.
Answered 25.
J. P. Gruet.

Transmitted
Nov. 24, 1902,
To A. M. F., V. Pt.

Report on Outside Purchases of Fuel Oil for October.

NEW YORK, 22*nd November*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

1018 DEAR SIR: I am in receipt of your favor of the 20th inst., enclosing monthly statement showing Outside Purchases of Fuel Oil for the month of October.

I note, on your purchases from T. W. Lane, that the price given on your statement is "at well." In your contract with T. W. Lane the price specified is 2 cents per barrel more delivered to cars than at the well. Will you kindly advise me what arrangement you have for the delivery of this Fuel Oil to cars, and at what extra cost to you.

Yours truly, R. H. McNALL.

W. E. B.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Nov. 22, 1902.
Answered "
J. P. Gruet.

Salesmen's Expense.

NEW YORK, N. Y., *Nov.* 20, 1902.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: I am in receipt of your letter of the 15th, in reference to charging a proportion of certain salaries and expenses to item of 'Salesmen' for Refined Oil and Naphtha in barrels and cases. Your proposed method will take care of this charge and, beginning with reports for November, please put same into effect.

In regard to trucking expense at St. Louis; will you please advise me the exact situation in reference to the expense of hauling barreled and cased goods. Are you having all goods hauled by outside parties at a certain charge, per package, or do you hire horses and trucks at a certain charge, per month, from outside parties?

1019 Yours truly, R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Dec. 12, 1902.
Answered 15.
J. P. Gruet.

Iron Barrel No. 3167 Belonging to Standard Oil Company, Seattle, Washington.

NEW YORK, N. Y., 10*th December*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: Some time ago you wrote me that the Sells & Downs Circus, exhibiting at Texas points, had in their possession an iron barrel, marked S. O. Co., Seattle, No. 3167. I wrote you, at the time, to get possession of this barrel, if possible. I am, this morning, in receipt of a letter from San Francisco, stating that this barrel is the property of the S. O. Co., and does not belong to the Circus people. Will you kindly advise me if you have the iron barrel, if you can use it in your business, and if so at what price. It may be possible that I will ask you to ship this to Seattle, Washington, but it seems to be an expensive way of straightening out the matter.

Yours truly,

R. H. McNALL.

1020 R. P. T. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Dec. 8, 1902.
Answered ——
C. M. A.

Settlement of November Account.

NEW YORK, N. Y., *December 5th*, 1902.

Waters Pierce Oil Co., St. Louis, Mo.

GENTLEMEN: I attach hereto statement of November account with R. P. Tinsley, Agent, showing debit balance of $493.69, which I will thank you to settle as follows:—

Check to order of Standard Oil Co. of New York..... $18.45
" " " " Atlantic Refining Co..... 475.24

Yours truly,

R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Dec. 15, 1902.
Answered ——
J. P. Gruet.

Fire Losses and Insurance for Year 1902.

NEW YORK, N. Y., 13*th December*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: Will you kindly send me as soon as possible, after January 1st, a statement giving a list of fires at each of the stations in your section during the year 1902, showing date of fire, place where fire occurred, the origin of the fire as near as can be ascertained, together with the estimated loss of stock and plant, separately. Please also give amounts of money paid during the year as premiums for Fire, Marine and Boiler insurance, and the amounts collected for losses under such insurance. Kindly use enclosed form in making out your report, and oblige,

1021

Yours truly, R. H. McNALL.

W. E. B. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jan. 27, 1902.
Answered "
J. P. Gruet.

NEW YORK, N. Y., *Jan.* 24, 1902.

Mr. J. P. Gruet, St. Louis, Mo.

DEAR SIR: I thank you very much for your favor of the 20th inst., enclosing form 22-E, showing shipments from Port Arthur and Sabine Pass, and am very much placed to have this information. Note what you say in regard to the blank not being ruled exactly correct for the information, but we have no blank at present which would exactly suit, but if your Agent would give us the same information as he gave us in these reports, it will be perfectly satisfactory to us.

Yours truly, R. H. McNALL.

1022 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Feb. 24, 1902.
Answered 24.
J. P. Gruet.

Leaky Union Tank Line Tank Car No. 4630, Cairo, Ill.

NEW YORK, N. Y., *Feb. 20th*, 1902.

A. M. Finlay, Esq., V. P. Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I am in receipt of a communication from Mr. C. T. Collings stating that Union Tank Line Tank Car No. 4630, containing Stove Gasoline, shipped from Whiting, Ind., to Pine Bluff for your account, was damaged near Cairo, Ill., and the tank being in a leaky condition was unloaded at the station of the Standard Oil Co. at Cairo.

In regard to billing the contents of this tank car to the Standard Oil Co., they state that you have charged them 7.93¢ per gallon. I write to inquire if you should not have charged them your cost price, F. O. B. Whiting, plus freight to Cairo, which, I understand, is 11¢ per hundred.

If my understanding is correct, will you kindly correct your invoice to the Standard Oil Co., Cincinnati, advising me at the same time of price charged and how it is arrived at, and oblige,

Yours truly, R. H. McNALL.

1023 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jan. 6, 1902.
Answered 7-31.
J. P. Gruet.

B. & M.

Cash Sales Adjustment Account.

NEW YORK, N. Y., *Jan.* 4, 1902.

J. P. Gruet, V. P. Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: It has been suggested that it would be desirable to maintain at the Main Stations a Ledger Account entitled 'Cash Sales Adjustment Account' to take care of errors in cash sales. At the present errors in Cash Sales are being taken care of in the manner provided for by Item # 51 in the Resolutions, which reads as follows:

Item 5—Error in Cash Sales: We recommend that the following method be pursued to correct errors in Cash Sales. The Correct amount of Cash Sales should be passed through Sales Sheet and actual cash receipts entered on Cash Report and the amount of Cash 'over' or 'short' be carried as a memorandum until such error can be corrected by next settlement.

Enclosed herewith proposed Circular Letter which I submit to you for your careful consideration.

Please advise me whether or not you favor keeping the separate account as outlined.

Yours truly, R. H. McNALL.

1024 W. J. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Feb. 17, 1902.
Answered "
J. P. Gruet.

January Account.

NEW YORK, N. Y., *Feb. 15th*, 1902.

Waters Pierce Oil Company, St. Louis, Mo.

GENTLEMEN: Referring to our statement of January account, mailed you February 11th, showing balance due us of..... $479.28
From which we deduct your invoice Jan. 31st..... 155.95

Balance due us..... $323.33

Yours truly, R. H. McNALL.

H. M. T. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Feb. 17, 1902.
Answered 17.
J. P. Gruet.

Semi-annual Statement # 3.

NEW YORK, N. Y., *Feb.* 15, 1902.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: I am in receipt of your letter of the 13th inst., enclosing me semi-annual Statement # 3 showing total sales and results of the business in United States territory for year 1901.

In looking over this statement I notice your sales of Fuel Oil show you only made a profit of $9946, or 3¢ per barrel. If you should sustain any loss on account of bad debts on any of your fuel oil sales it would practically reduce the profit on this class of
1025 business to very little, if anything.

I also notice in your Naval Stores Dept. that you have your sales as being 100,678 barrels, on which you made a gross profit of $279.18. You also show this as your net earnings, no expense being charged against it. As a matter of information will you please let me know if the sales referred to above represent the rosin which you are selling for account of the Shotter Co. If this is so, then am I to understand you only made a gross profit of $279.18 in selling the 100,678 barrels of rosin?

Yours truly, R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Feb. 6, 1902.
Answered 6.
J. P. Gruet.

Fire at Pine Bluff, Arkansas.

NEW YORK, N. Y., *Feb. 4th*, 1902.

A. M. Finlay, Esq., V. P. Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I beg to hand you herewith clipping from the Philadelphia Drug Paper reporting fire at your plant at Pine Bluff, Arkansas. Loss $8,000.

I can not find that you have reported this fire.

Will you not kindly advise if there is any truth in this report, if so, give what details you can, and oblige,

Yours truly, R. H. McNALL.

1026 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Mar. 13, 1902.
Answered 13.
J. P. Gruet.

Shipments Fuel Oil from Beaumont.

NEW YORK, N. Y., *March* 10, 1902.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: Replying to your favor of Feb. 25th, in which you say that the information of tank car shipments could be obtained, but

it would necessitate employing another man. There is no way that I can obtain this information except through your efforts, and I feel that it is of very vital importance that I have information of these car shipments.

Yours truly, R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Feb. 26, 1902.
Answered "
J. P. Gruet.

Closing Statements.

NEW YORK, N. Y., *Feb'y 24th*, 1902.

Mr. J. P. Gruet, St. Louis.

DEAR SIR: I acknowledge receipt of yours of the 19th inst., enclosing balance sheet and trial balance as of Dec. 31st, and also am later in receipt of trial balance of Division Ledger of same date, but as we have not had time to carefully look these over, are not in position to acknowledge their correctness.

In regard to the question you ask *in re* Profit & Loss and
1027 Surplus A/c, would say that it will not be necessary to carry a Surplus A/c as formerly, bringing the capital and surplus to an amount equalling the investment less plant depreciation, and we would suggest that you carry all profits for the present into your Profit & Loss A/c.

Yours truly, R. H. McNALL.

H. M. T.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Feb. 26, 1902.
Answered 27.
J. P. Gruet.

Banks used by W. P. O. Co.

NEW YORK, N. Y., *Feb. 24th*, 1902.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: I am in receipt of your letter of Feb. 20th, enclosing me statement giving the names of banks you do business with in your territory and their locations. My understanding is that this list shows every bank at which the W. P. O. Co. has an account, but the list seems very small. I was under the impression that you had bank accounts at a number of small points. If you have not, will you please let me know as a matter of information how you take care

of the funds collected by your agents at all the other points. Did you not understand from my letter that I wanted the name of every bank and the location of same where the W. P. O. Co. had an account?

Yours truly, R. H. McNALL.

1028 W. E. B. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Apr. 18, 1902.
Answered 18-30.
J. P. Gruet.

NEW YORK, N. Y., *April* 16, 1902.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: I am sending you an extra supply of blanks form 23-D. Please report on this blank, each month, the purchases of Texas oil made by you from different parties, showing the amounts received from each shipper. I would be very glad if you would send me a report of this business from January, 1902, each month, separately.

Yours truly, R. H. McNALL.

W. E. B. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Apr. 21, 1902.
Answered 22.
J. P. Gruet.

Depreciation of Iron Packages.

NEW YORK, N. Y., *April* 19, 1902.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: Referring to recent correspondence in regard to the question of charging depreciation of all iron packages to B. & M. expense, it is the feeling that this should be done and that our ruling should be changed to take effect July 1st, but before this change is made I want your views as to whether the 4¢ per package per month is a fair charge. Also, if you please, whether or not the
1029 method as given in the B. & M. Primer, page 27, is the easiest and best way to carry this expense to the proper station.

Yours truly, R. H. McNALL.

W. E. B. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
May 21, 1902.
Answered 5/21/02.
J. P. Gruet.

NEW YORK, N. Y., *May* 19, 1902.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: In looking over your reports 80-D, showing construction equipment, etc., as of Dec. 31, 1901, beg to call your attention to reports that are missing for stations mentioned.

Will you kindly advise if reports should not be rendered for these stations; if so, will you kindly have same sent in.

Mount Vernon, Mo. Missouri Div.
Ozark " " "
Alma, Arkansas Arkansas "
Benton, " " "
Greenwood " " "
Luxora " " "
Nettleton " " "
Queen City, Texas, E. Texas and La. Div.
Como " North Texas "
Chico " Central " "
Columesniel " Southern " "
Ledbetter " " " "

1030

Paige " " " "
Boerne " West " "
Castroville " " " "
Apetatillau Mexico Central Mexico "
Santa Anna " North Mexico "

Yours truly,

R. H. McNALL.

W. E. B. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
May 9, 1902.
Answered 9.
J. P. Gruet.

80-D Encyclopedia.

NEW YORK, N. Y., *May* 8, 1902.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: I am very anxious to receive your Encyclopedia Report form 80-D, showing construction, equipment, etc., at your different

stations as of Dec. 31, 1901. Will you kindly hurry these reports as much as possible?

Yours truly, R. H. McNALL.

(Pencil memorandum:) They are all ready to send off to-day, 595 of them.

1031 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
May 1, 1902.
Answered ——
J. P. Gruet.

Prices Paid for Supplies.

NEW YORK, N. Y., *April 29th*, 1902.

J. P. Gruet, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Kindly fill in enclosed report showing prices paid for supplies, and oblige,

Yours truly, R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jun- 18, 1902.
Answered ——
J. P. Gruet.

May Account.

NEW YORK, N. Y., *June 16th*, 1902.

Waters Pierce Oil Co., St. Louis, Mo.

GENTLEMEN: We enclose herewith itemized statement of May account, with balance in our favor of $557.38, for which kindly remit checks as follows:—

In favor of Atlantic Refining Co..... $470.90
" " " Standard Oil Co. of New York..... 86.48

Yours truly, R. H. McNALL.

(Attached to this letter is the following statement:)

1032 Waters Pierce Oil Company in a/c with Walter Jennings, Ag't.

				May 31, '02.	
May 13.	Star	Transfer	#1198	30.52	
20.	"	"	1228	11.27	
26.	"	"	1258	30.60	
28.	"	"	1270	14.09	
3.	Scranton	"	194	117.04	
5.	"	"	199	21.42	
8.	"	"	200	46.09	
9.	"	"	406	33.25	
"	"	"	407	8.02	
12.	"	"	411	21.28	
"	"	"	412	21.08	
14.	"	"	418	132.03	
16.	"	"	419	48.30	
19.	"	"	428	10.97	
21.	"	"	435	86.08	
22.	"	"	436	58.15	
27.	"	"	450	56.24	
31.	"	"	452	27.92	
					774.35

Credits.

May [illegible]	Your charge			57.04	
23.	"	"		25.44	
29.	"	"		134.49	
					216.97
					557.38

1033 W. E. B. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jun- 13, 1902.
Answered 17.
J. P. Gruet.

Transmitted
Jun- 16, 1902.
To J. A. S.

Cost of Barrelling & Marketing.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: I beg to give below memo. of the average costs of barrelling and marketing oil at stations in the various divisions during the last six mos. of 1901, to be used in preparing Cost & Selling Price Statements during the last six mos. of 1902.

	Prep'n. Iron bbls.		Total cost barrelling.		Tank Wag.		Marketing. Bulk.		Barrels.	
	Head.	Subs.	Head.	Subs.	Head.	Subs.	Head.	Subs.	Head.	Subs.
St. Louis.....	.09	.07	2.25	2.12	1.13	2.20	.36	2.12	.49	2.19
Arkansas	.32	.11	1.80	1.76	2.01	2.39	2.15	1.87	1.49	1.84
E. Texas & La..	.11	.24	1.63	1.58	1.88	2.56	1.97	2.66	2.53	2.25
N. Texas.....	.11	.18	1.83	1.78	1.73	2.20	1.42	2.11	1.94	1.73
Central Texas...	.72	.21	1.41	1.42	1.81	2.53	2.03	2.64	2.29	2.41
So Texas.....	.41	.12	1.48	1.43	3.22	3.66	3.00	2.87	3.14	2.96
West Texas.	.20	.08	1.46	1.44	2.48	2.71	2 04	2.71	2.57	2.44
No. Mexico.....	.09	...	....	....	2.16	....	1.20	....	2.02	
Central Mexico .	.11	.20	....	....	1.86	1.98	.98	1.22	2.13	1.93

If you desire to make any change in basis of costs to be used during the coming six months, please advise.

Yours truly,

R. H. McNALL.

1034 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jun- 12, 1902.
Answered ——
J. P. Gruet.

Discontinuing Semi-monthly Reports of Sales of Stoves, Lamps, etc.

NEW YORK, N. Y., *June* 10, 1902.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: In regard to semi-monthly reports which you are now rendering showing sales of Stoves, Lamps, etc., would say that they can be discontinued and a report made say on June 30th and Dec. 31st, showing sales of these articles for 6 months.

Yours truly,

R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jul- 9, 1902.
Answered ——
J. P. Gruet.

Salary List—December 31st, 1901, and January 1st, 1902.

NEW YORK, N. Y., *July 7th,* 1902.

J. P. Gruet, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I beg to acknowledge receipt of your favor of the 3rd inst., enclosing Salary List as of December 31st, 1901, and January 1st, 1902.

Thanking you for same, I remain,

Yours truly,

R. H. McNALL.

1035 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jun- 21, 1902.
Answered July 3d.
J. P. Gruet.

Salary List.

NEW YORK, N. Y., *June 19th*, 1902.

J. P. Gruet, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Referring to my letter to you of the 13th inst., and your reply under date of the 17th inst., in regard to statement of Salaries paid on December 31st, 1901, and January 1st, 1902, beg to say that while we have had some correspondence in regard to this salary list, yet I have only received a copy of the list 1900 and 1901, which I am under the impression was sent to me by mistake. Your salary list for December 31st, 1901, and January 1st, 1902, has not been received by me.

These lists may have been sent to Mr. H. C. Pierce, but he has not turned them over to me. Therefore, I will have to trouble you to make up a new list of these salaries, and forward it to me at your earliest convenience.

In regard to the letter which you refer to as having been written from this office to Mr. H. C. Pierce, dated February 27th, 1902, would say that these changes on which comments were made, were shown by a list which you sent, recommending advances in salaries to various parties in the different Divisions.

What I would like is a complete salary list such as you have before furnished.

Yours truly, R. H. McNALL.

1036 S. H. P. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jul- 14, 1902.
Answered ——
J. P. Gruet.

Transmitted
Jul- 14, 1902,
To Ex. Com.

Read at Committee Meeting Jul- 14, 1902. C. A. P., Secretary.

NEW YORK, N. Y., *July* 11, 1902.

Mr. J. P. Gruet, Sec'y Waters-Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Referring to your letter of the 7th—the documents referred to are returned with this. The Inland Oil Co. as a corporation has surrendered its charter, and is out of existence.

If you continue the use of that name any longer, it should be on a new letter-head, and upon your own responsibility. The writer's advice would be to discontinue it.

Respectfully, R. H. McNALL.

W. E. B. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jul- 9, 1902.
Answered 9.
J. P. Gruet.

41-D and 41-N Reports.

NEW YORK, N. Y., *July* 7, 1902.

J. P. Gruet, Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Replying to your favor of July 3rd on the above subject. I beg to state that it will be perfectly satisfactory for you to render reports as stated. Please understand that these de-
1037 liveries should represent the total deliveries of the Mexico refineries to the trade, the amount of money and the average price received, reduced to a bulk basis; that is, deduct all freights, cartage, terminal charges, etc., so that the report will show the total deliveries, and the average price received f. o. b. refinery.

Yours truly, R. H. McNALL.

26 Broadway.

Received
Aug. 22, 1900.
Answered ——
J. P. Gruet.

Subject: Report of Total Sales U. S. Divisions for July. Comparative Statement of Tank Wagon Sales for July at Commission and Other Points.

NEW YORK, *Aug.* 20, 1900.

J. P. Gruet, Esq., Vice Pres. W. P. O. Co., St. Louis, Mo.

DEAR SIR: We beg to acknowledge receipt of your favors of the 17th and 18th enclosing comparative statement of total sales of refined oil and naphtha and gasoline in U. S. Divisions for July, 1899, 1900, Forms 10 N and 10 D. Also comparative statement of tank wagon sales of refined oil and gasoline at commission tank wagon points, and the same statement for all other tank wagon points, both for July, 1899/00.

Yours truly,

H. M. TILFORD.
R. H. M.

1038 Mr. ALLEN: We are going to offer some answers on page 44. There is one question we want to read with reference to Exhibit 14. It is just simply to identify who "R. P. T." is. Read both of those questions.

(Mr. Brady reads questions and Mr. Allen the answers.)

Q. We have here a letter dated New York, December 5, 1902, addressed to Waters-Pierce Oil Company, St. Louis, Missouri, purporting to be signed by you. I will ask you if that is your signature? (Handing witness letter.)

A. That is my signature.

Q. Who is R. P. T.? Who does that stand for?

A. The initials of R. P. Tinsley.

Mr. ALLEN: Now, then, on page 46, referring to a letter dated New York, February 15, 1902, with reference to Exhibit 19.

Q. We have here a letter dated New York, February 15, 1902, addressed to Waters-Pierce Oil Company, St. Louis, Missouri, purporting to be signed by R. H. McNall, and I will ask you to examine that letter and say whether or not that is your signature? (Handing witness letter.)

A. That is my signature, yes.

Q. I see in the upper left-hand corner the initials "W. J." For whom do those initials stand, or whom do they represent—what name do they represent?

A. I believe Walter Jennings.

Q. Who was Walter Jennings? What connection had he with any of the Standard Oil Companies?

A. I think certain accounts were in his name as agent.

Q. What kind of accounts?

A. Certain goods purchased by the Waters-Pierce Oil Company.

Q. Certain goods purchased by the Waters-Pierce Oil Company, the accounts were run in his name as agent?

A. I believe so.

1039 Q. What goods do those accounts include?

A. I don't remember.

Q. Is there anything in that letter to indicate.

A. No, there is nothing in the letter to indicate.

Q. To refresh your memory, didn't you carry accounts with the Atlantic Refining Company and the Standard Oil Company of New York both in Walter Jennings' name?

A. I don't know about the accounts.

Q. What is your recollection about it?

A. I know nothing about it.

Q. Well, you stated this morning that those initials in the upper left-hand corner indicated from whom you got information, or with whom you had dealings. Do you mean to say that you were dealing with him, having accounts running with him, and didn't know who he was representing?

A. This referred to an account.

Q. Well, doesn't the letter refer to an account?

A. It refers to an account.

Q. What accounts?

A. Goods purchased by the Waters-Pierce Oil Company.

Q. In whose favor are those accounts?
A. Well, it is an indebtedness of the Waters-Pierce Oil Company.
Q. To whom?
A. To Walter Jennings, Agent, I believe.
Q. Is the account in his name as agent?
A. I don't know; I should think it was.
Q. Why are you requesting checks sent? This letter doesn't show—I beg your pardon; I thought it didn't. Did you buy these goods that are represented by this invoice, or this statement?
A. I don't know.
1040 Q. Well, why did you put in here that these statements, if they were purchased from Walter Jennings, why did you put in here, "Showing the balance due us of $479.28"?
A. That was the statement showing a credit balance.
Q. A credit balance to whom?
A. Who ever it says in this letter.
Q. The letter says, "Referring to our statement of January account mailed you"—this is addressed to the Waters-Pierce Oil Company—"mailed you February 11th, showing balance due us of $479.28, from which we deduct your invoice, the Waters-Pierce oil invoice, January 31, $155.95, balance due us $323.33." That was a balance due to Walter Jennings, Agent?
A. Walter Jennings, Agent.
Q. Why do you say it is due us if you are representing the Waters-Pierce Oil Company?
A. I don't remember.
Mr. ALLEN: Now, on page 54.
Judge PENN: With reference to what exhibit?
Mr. ALLEN: Well, it's the last exhibit. It begins in the middle of the page, "By Mr. Allen," is the way it is headed.
Q. We have here a letter dated "New York, August 20, 1900," addressed to J. P. Gruet, Esq., Vice President of the Waters-Pierce Oil Company, purporting to be signed by H. M. Tilford, with the initials "R. H. M." Please examine that and see if you can identify that as having been written by you. Is that signature of Mr. Tilford in your handwriting (handing witness paper)?
A. It is in my handwriting.
Q. Did you write the letter, or did Mr. Tilford write it and give it to you to sign?
A. I must have written this letter.
Q. Have you any independent recollection of the letter,
1041 writing it, or anything why you signed Mr. Tilford's name to it instead of your own?
A. It was undoubtedly signed by oversight on my part.
Q. You were so accustomed to signing Mr. Tilford's name, per you, that you——
A. (Interrupting.) I had signed letters for him; yes, I had signed letters in his name, and undoubtedly this was an oversight.
Q. Were you signing letters in his name at that time?
A. I think it is likely that I should have; I don't remember.
Q. Isn't it a fact that you were signing a great many letters in his name at that time?

A. I signed some letters in his name.

Q. And you were so in the habit, you say, of signing them, that you unconsciously signed his signature instead of your own?

A. I might have signed his name just prior to that to some other letter, and it was an oversight my signing that.

Mr. ALLEN: We now offer the cross examination of Mr. McNall by Judge Priest, counsel for the defendant, on page 60.

Judge PENN: Mr. Allen, couldn't you read both the questions and answers, so we could have the benefit of a copy?

Mr. ALLEN: All right.

(Mr. Allen read both the questions and answers.)

Q. Mr. McNall, you have stated in your examination in chief that you were employed by the Waters-Pierce Oil Company from about the first of April, 1900, until 1906, as agent at the city of New York; that some months after you entered upon that employment you were given the title of Commercial Agent; is that a true summary of your statement?

A. With the exception of the dates, Judge. You said April first.

Q. From about the first of April?

A. It was in the year 1900.

Q. Yes, the early part of 1900. Was the title of Commer-
1042 cial Agent understood by you to be in any wise definitive of the duties which you were to perform?

A. No, I didn't understand that it was.

Q. It was simply an official designation without attaching to it any particular signification?

A. Yes, sir.

Q. You discharged such duties as were requested of you in addition to the general line of duties that you understood would be attached to your functions here at New York?

A. Yes, sir.

Q. Do you know whether the Waters-Pierce Oil Company had any other agent or official representative in New York during that period?

A. I do not think they had.

Q. What, in dollars, approximately, was the amount of transactions conducted by you in New York for the Waters-Pierce Oil Company annually?

A. A very large amount; I should say several hundred thousand dollars.

Q. And generally all of the correspondence of the Waters-Pierce Oil Company concerning its business dealings and intercourse in the East was conducted through you for purposes of convenience?

A. So I understand.

Q. You know of no other than yourself?

A. I do not.

Q. The period of your employment was quite an active one and involved a great many dealings of different characters for the Waters-Pierce Oil Company and a great deal of correspondence with the home office at St. Louis; is that true?

A. Yes, sir.

Q. Prior to being called as a witness you had no knowledge either

from the plaintiff or the defendant in this case as to what facts
1043 you would be interrogated, did you?

A. No, sir.

Q. So that necessarily you couldn't recall the details of transactions at this distant period from the occurrence of many of them?

A. I could not.

Q. A great many supplies were purchased by you for the Waters-Pierce Oil Company in New York and the vicinity of New York?

A. Yes, sir.

Q. A great deal of export business was done by the Waters-Pierce Oil Company from New York to the Republic of Mexico, was it not?

A. Yes, sir.

Q. That consisted of the purchase of raw materials, machinery, and all of the incidents of an equipped refinery being conducted by the Waters-Pierce Oil Company in the Republic of Mexico?

A. Yes, sir.

Q. Did you make large purchases of tin and of crude petroleum for the Waters-Pierce Oil Company?

A. I did.

Q. Now, will you describe the formula requisite in the exportation of merchandise or material from New York or other ports in the United States to the City of Mexico?

A. After the purchase, Judge?

Q. After the purchase.

A. Certified invoices had to be obtained, bills of lading, gross and net weights, freight arrangements had to be made. It was necessary to collect the goods in New York City if shipped from out of town and see that they were delivered at a specified time to the exporting vessel.

Q. And did all of these consignments require the signature of the Mexican Consul here?

A. Yes, sir.

1044 Q. You know in a general way that the Standard Oil Company of New Jersey—by that I mean the Standard Oil Company organized under the laws of New Jersey—does a large manufacturing business in petroleum and its products and by-products?

A. Yes, sir.

Q. Did the Waters-Pierce Oil Company, so far as you know, manufacture any products from petroleum or refined petroleum in the United States?

A. As I understand it they did not.

Q. A great many of the purchases made by you were made from different manufacturing interests in the East and in the vicinity of New York?

A. They were.

Q. You have been shown and identified about 37 letters written by you. They cover a date, I think, from 1902 to 1905, inclusive, one being dated as early as August 20, 1900. Now, in your opinion, are the letters thus exhibited to you a mere fraction of the correspondence conducted by you with the officers of the Waters-Pierce Oil Company at its home office in St. Louis?

A. Yes, a small part.

Q. In one of these letters you refer to a Mr. Van Beuren. For the purpose of specifically directing your attention to that subject I submit to you a letter dated January 24, 1905, entitled "Changes in Mexico Salaries." Who was Mr. Van Beuren and what relation did you understand he bore to the Waters-Pierce Oil Company?

A. I don't know who Mr. Van Beuren was, but I understood he was largely interested in the Waters-Pierce Oil Company?

Q. You know Mr. Van Beuren personally?

A. Yes, I knew him personally.

Q. And you understood he was largely interested as a shareholder in the Waters-Pierce Oil Company?

A. Yes, sir.

1045 Q. Did you understand early in your connection with the Waters-Pierce Oil Company that the Standard Oil Company of New Jersey held a stock interest—by that I mean shares of stock—in the Waters-Pierce Oil Company?

A. I thought they were interested in the company.

Q. Now, I will ask you whether it is not true that the most of those letters which were written by you, without specifically enumerating them, making inquiries as to the business affairs, the cash, the statement of salaries, statement of improvements, and all questions of that kind, were not inquiries which you were asked to make as the Eastern representative of the Waters-Pierce Oil Company in the interest of the shareholders of that company, either Mr. Van Beuren or the Standard Oil Company of New Jersey?

A. Yes, sir.

Q. And those inquiries were made as a matter of course assuming that the home office at St. Louis if they were improper would not answer them, and if they were proper would answer them?

A. Yes, sir.

Mr. ALLEN: Well, we don't offer the next question and the answer.

Q. From what source did you receive the orders for the purchase and shipment of supplies, and so forth?

A. From Mr. C. M. Adams, mostly, of the Waters-Pierce Oil Company at St. Louis.

Q. I want to call your attention to a letter, New York, June 16, 1902, addressed to the Waters-Pierce Oil Company, St. Louis, in which you say, "We enclose herewith itemized statement of my account with balance in our favor of $557.38. Will you kindly remit checks as follows." Now, I ask you if you know how the pronoun "our" came into that letter?

1046 A. I believe that this letter was written from a memorandum received by me from one of the accounting officers in the building, and the memorandum was probably turned over by me to my stenographer to write the request for remittance, and I think he must have copied the memorandum just as he received it.

Q. Now, is there attached to that letter a copy of the account referred to?

A. Yes, sir.

Q. And that shows that the account was in favor of whom?
A. Walter Jennings, Agent.
Q. Were you ever employed by Walter Jennings, Agent?
A. No, sir.
Q. Did you purchase any goods from Walter Jennings, Agent, for the Waters-Pierce Oil Company?
A. I purchased goods covered by this statement.
Q. Well, many times, didn't you, besides——?
A. Oh, yes.
Q. And you never inquired and don't know for whom Walter Jennings was agent?
A. No, sir.
Q. (Continued) Did you?
A. No, sir.
Q. Do you know now for whom he was agent at that time?
A. I do not.
Q. The purchases which you made of Walter Jennings simply ran in his name as agent?
A. Yes, sir.
Q. Without disclosing for whom he was agent?
A. Yes, sir.
Q. And you don't know for whom he was agent?
A. I don't.

Q. And you were never employed by Mr. Jennings at that
1047 time, or during the period that you were employed by the Waters-Pierce Oil Company?

A. No, sir.
Q. Never at any time, in fact?
A. Never.
Q. Now, while I am on that proposition, I want to ask whether during the time you were employed as commercial agent by the Waters-Pierce Oil Company you received any salary from any one else?
A. I did not.
Q. I call your attention now to a letter dated New York, March 24, 1904, addressed by you to Mr. S. Johnson, the one marked Exhibit 8 to your deposition in chief, and ask you from whom you purchased the crude scale wax referred to in that communication, if your memory is refreshed by reference to this communication, or by your general course of business?
A. (Looks at letter.) It was purchased, I think, through a lubricating office in the building.
Q. From the manufacturer?
A. Not from the manufacturer, No.
Q. And was this a memorandum which you originated, or which was in the form of a communication to you, in turn transmitted by you to Mr. Johnson?
A. It was a communication received by me, as I remember.
Q. And for the purpose of economy in time you had it transcribed and sent to Mr. Stephen Johnson at St. Louis?
A. Yes, sir.

Q. You can't state at this time, in view of the large number of your business transactions, the particularities of any one of the matters referred to in the correspondence which has been exhibited to you?

A. I can not.

Mr. ALLEN: Redirect examination, by Mr. Lightfoot:

Q. I believe, Mr. McNall, that you stated in your direct ex-
1048 amination that since you severed your connection with the Waters-Pierce Oil Company in May, 1906, that you have been employed in the export department of the Standard Oil Company of New York, at 26 Broadway?

A. The export business.

Q. In the export business. Well, who for?

A. For the Standard Oil Company of New York.

Q. Now, you spoke a moment ago, in answer to a question by Judge Priest, about purchasing the crude scale wax mentioned in your letter marked Exhibit 8, from a lubricating department in the building?

A. Yes, sir.

Q. The lubricating department of what company did you purchase that —?

A. I don't know what companies the lubricating office represented.

Q. Well, you do know that it represents more than one company located at 26 Broadway, do you not?

A. I think it represented more than one company.

Q. Well, now, what is your information about what companies it does represent? Not all of them—I don't suppose you could give them all—but those of them that you know of that it does represent?

A. I know that part of the goods I purchased from them was shipped from different points.

Q. What points?

A. Whiting, Indiana, and from New York City.

Q. Any of them from Neodesha, Kansas?

A. No, I don't remember any.

Q. Any of them from Beaumont, Texas?

A. No, I don't remember any.

Q. Well, from what other points do you remember that goods were shipped that you purchased from the lubricating department at 26 Broadway?

A. I don't think there were other points; I don't recall them.

Q. Any from Franklin, Pennsylvania?

A. I couldn't say.

1049 Q. Well, now, what is your information about the companies doing business through the lubricating department at 26 Broadway? What companies? The Standard Oil Company of New York?

A. Well, I have no information on that point, Mr. Lightfoot.

Q. None whatever?

A. I have none at all as to who is represented there, or as to who that department represents.

Q. It is right there in the building, is it not?

A. Yes, sir.

Q. They have had that department there during the entire time that you have been employed there, have they not?

A. I couldn't say during the entire time; during the time I was employed by the Waters-Pierce Oil Company.

Q. You knew there was such a department there?

A. Yes, sir.

Q. Now, is Mr. S. H. Payne—Silas H. Payne—connected with that department, the lubricating department?

A. He is in that office.

Q. He is at the head of that department, is he not?

A. I understand that he is.

Q. Well, now, you say that this letter just referred to was copied from a memorandum that was sent from that office?

A. Is that correct?

A. As near as my recollection serves.

Q. When did you ascertain that fact? Since you were examined here?

A. Since I saw that letter.

Q. Well, how did you get that letter? Did you see the memorandum?

A. No.

Q. Well, how did you get the information that it was copied from the memorandum—this letter marked Exhibit 8, relating to crude scale wax—how did you get the information that the letter
1050 was copied from the memorandum sent to you from the lubricating department?

A. It is simply a recollection, Mr. Lightfoot.

Q. Well, you just remember that?

A. Yes, sir.

Q. Have you that memorandum now?

A. No.

Q. Have you seen it since you had this letter?

A. No.

Q. Were you instructed by Mr. Payne to make these suggestions to the Waters-Pierce Oil Company concerning these goods?

A. I wasn't instructed by him, no.

Q. Well, who were you instructed by to make these recommendations?

A. The only instructions I received were from the home office, and any letters or memoranda of that kind I would forward to the home office.

Q. And this has "S. H. P." in the corner, and that indicates that the contents of that letter were sent to you by Mr. Payne, does it not?

A. Yes, sir, from that office.

Q. How did you transact your business with that office, Mr. McNall? If you wanted lubricating oils for the Waters-Pierce Oil Company would you make a requisition on the lubricating department there for such lubricating oils as you wanted?

A. For such lubricating oils as the home office ordered.

Q. You would make requisitions to that department for them?
A. Yes, sir.
Q. Now, then, was any of these goods that you made requisition on the lubricating department for supplied to you by the Standard Oil Company of New Jersey?
A. I don't remember.
1051 Q. You don't remember whether they were or not?
A. No, sir.
Q. Were any of them supplied to you by the Standard Oil Company of New York, or any refinery owned by them or controlled by them?
A. I don't remember.
Q. Was any of them supplied to you by the Atlantic Refining Company?
A. I don't remember any specific case.
Q. Any of them supplied by the Standard Oil Company, Pratt Works?
A. I don't remember, Mr. Lightfoot.
Q. You don't remember what companies, then?
A. No, sir.
Q. (Continuing:) Supplied the orders that you filled with the lubricating oil department?
A. No, sir.
Q. Now, then, if you received an order for marine oil to be delivered to vessels at any port in Texas, where would you file that requisition?
A. If the order came from the home office I would file it with the marine oil department in the building.
Q. At 26 Broadway?
A. Yes, sir.
Q. They have such a department there?
A. There is an office there—marine oil office.
Q. And these oils would be furnished you, would they?
A. They would be furnished.
Q. Who by?
A. I don't remember who they would be furnished by. I think the marine oil department invoiced the goods, as far as my memory serves.
Q. Well, now, you did receive such orders during the time that you were there for marine oils, did you not?
A. I believe I did.
Q. And they were shipped to the defendant in Texas?
1052 A. Yes.
Q. Well, now, then, Mr. C. E. Bedford, is he connected with the marine oil department?
A. Who? Initials, please?
Q. C. E. Bedford.
A. Yes, sir. I believe he is.
Q. What position does he hold there?
A. I don't know, but I think he is head of that office.

Q. Well, now, what companies are connected or do business through the marine oil department at 26 Broadway?

A. I don't know.

Q. Do you know whether the Standard Oil Company of New Jersey does or not?

A. I do not know.

Q. You don't know any of the companies?

A. No, sir.

Q. You have never inquired?

A. No, sir.

Q. You know Mr. C. E. Bedford personally, do you not?

A. Yes, sir.

Q. You never asked him what companies were connected with the marine oil department?

A. No.

Q. Now, did the Waters-Pierce Oil Company have any contracts with any vessels touching at the ports in Texas for delivery of marine oil to them?

A. I don't know.

Q. Did you ever see any such contract?

A. I don't remember ever having seen any.

Q. Now, in the course of your business with the Waters-Pierce Oil Company, what did they do with sales or invoices made to
1053 vessels at the Texas ports, in case they delivered to that vessel marine oils? Did they make any report of it to you?

A. Yes, I occasionally received such report.

Q. Is it not a fact, Mr. McNall, that they delivered to vessels touching Texas ports marine oils where the Standard Oil Company had contracts with such steamers for oils? What is your answer to the question, Mr. McNall?

A. I believe the Waters-Pierce Oil Company did deliver occasional oils to the steamers for account of the marine oil department.

Q. Now, in such cases, Mr. McNall, where the Waters-Pierce Oil Company made deliveries to vessels at Texas ports for the account of the marine oil department of the Standard, they would render a statement to the marine oil department, would they not?

A. They would.

Q. And what action would the marine oil department take reference to such statements—with reference to credits for those deliveries?

A. As I remember it, the Waters-Pierce Oil Company would bill the marine office for such goods delivered.

Q. Then what would the marine department do?

A. Well, I don't know; I suppose they would bill their customer.

Q. They would collect the bill from the customer to whom the Waters-Pierce Oil Company had made the delivery?

A. I presume so.

Q. And then give the Waters-Pierce Oil Company credit for the value of the goods delivered?

A. As I remember it.

Q. Now, has the Standard Oil Company of New Jersey an office at 26 Broadway, Mr. McNall, or a representative there?

A. I don't know.
Q. You don't know whether they have an office there or not?
1054 A. No, I do not.
Q. What companies have offices there that you know of, or representatives?
A. Well, I don't know, Mr. Lightfoot.
Q. How long have you been in the building, Mr. McNall?
A. I have been there a good many years.
Q. How many stories is there to it?
A. There are about fifteen.
Q. How many employes inhabit that building, approximately?
A. Perhaps five hundred; I don't know, maybe a thousand.
Q. Do you know of any concern domiciled in that building that is not connected with some of the Standard Oil Companies?
A. Yes.
Q. What concern is that?
A. Jessup & Lamont.
Q. What kind of business are they in?
A. Stock brokers, I believe.
Q. What floor are they on?
A. I couldn't remember that, either.
Q. Do you know of anybody else?
A. There are others, but I can't recall them just at present.
Q. You don't know whether the Standard Oil Company of New Jersey has an office there or not, you say?
A. No, sir.
Q. Well, how about the Standard Oil Company of New York?
A. I think they have an office there.
Q. Well, the Standard Oil Company of Indiana?
A. I know of no such office.
Q. Of Kentucky?
A. I know of no such office.
Q. Did you ever examine the telephone book there to see
1055 what companies were reached through the Standard Oil Company number?
A. No.
Q. Now, Mr. McNall, you say that you were employed by Mr. Pierce?
A. Yes.
Q. To act as commercial agent of the Waters-Pierce Oil Company?
A. Yes.
Q. I ask you if Mr. H. C. Pierce has not an office in New York at 25 Broad Street?
A. I believe he has in the Broad Exchange building.
Q. Have you ever been in his office?
A. Yes, sir.
Q. How long has he had that office there?
A. Something over a year, I think.
Q. Hasn't it been longer than a year? How much longer than a

year? Hasn't he had an office there during the time that you have been employed as commercial agent of the Waters-Pierce Oil Company?

A. I don't know that he has.

Q. Now, you stated in your cross examination that you made large purchases of tin and crude petroleum for export to Mexico. From whom did you purchase that tin?

A. From an office in the building.

Q. At 26 Broadway?

A. Yes, sir.

Q. Well, now, from what office did you purchase it?

A. The office of Mr. H. A. McGee.

Q. What department is it generally called?

A. I don't think it is designated as a department.

Q. The supply department?

A. No; he simply has an office there.

Q. Well, what manufacturing company produces that tin?

A. Some of it is produced in this country, and some abroad.

1056 Q. Some of it produced where?

A. Some in this country and some abroad.

Q. I mean by what companies?

A. I think the American Tin Plate Company in this country.

Q. Is he the representative of the American Tin Plate Company or of the Standard Oil Company?

A. The Standard Oil Company, I think.

Q. Which one of the Standard Oil Companies does Mr. McGee represent?

A. I don't know.

Q. Now, you purchased supplies of crude petroleum to be exported to Mexico for the Waters-Pierce Oil Company?

A. Yes, sir.

Q. From whom did you purchase the crude petroleum?

A. From the Atlantic Refining Company at Philadelphia.

Q. Did it have an office in the building?

A. It had a representative in the building.

Q. Who was the representative in the building of the Atlantic Refining Company?

A. I think Mr. F. D. Ash, as I remember.

Q. Mr. F. D. Ash was the agent of the Atlantic Refining Company, and when you received requisitions for crude petroleum you filed all such requisitions with Mr. Ash, did you not?

A. With Mr. Ash.

Q. Did you ever buy any crude petroleum for the Waters-Pierce Oil Company from any other concern?

A. I don't remember buying any from any other concern.

Q. Did you ever ask for any quotations from any other producing company?

A. No, I don't remember of having done so.

Q. You are now in the export business, you say, connected with that department?

1057 A. Yes, sir.

Q. Is that department fully equipped to look after the exportation of oils to different countries?

A. Yes.

Q. Does it attend to those details in all of its shipments abroad, seeing about getting the bills of lading approved by the consul, and attending to all of the details necessary to the shipment of oils and other products of petroleum to foreign countries?

A. I believe they do.

Q. They look after those details there?

A. Yes, sir.

Q. Now, I believe that you said, Mr. McNall, in your cross-examination, that you looked after those details connected with the export business for the Waters-Pierce Oil Company?

A. Yes, sir.

Q. Did the Waters-Pierce Oil Company have any other representative here in New York at that time during the period of time that you were employed by them?

A. Not that I know of.

Q. Did you personally take the bills of lading to the Mexican Consul to get his approval of them?

A. I did not.

Q. Did you personally look after all the details incident to the exportation of goods purchased for the Waters-Pierce Oil Company?

A. Many of them.

Q. Who attended to the matters, then, that you did not attend to in connection with the exportation of oils and supplies?

A. The parties furnishing the oil furnished the shipping documents.

Q. And so attended to all the details necessary?

A. It was customary.

Q. You say it is customary for the companies you pur-

1058 chased these supplies from to look after these details, is it not?

A. Some of the details.

Q. Well, what details is it they don't look after?

A. The custom-house work they can't look after—the custom-house entries; the collection of draw back; the arrangement from the steamer lines.

Q. What fees do you pay on export goods to Mexico?

A. There aren't many fees on export goods, but there are custom-house entries covering export goods.

Q. It is merely a manifest of the goods to be shipped out, is it not?

A. No, they are draw back entries.

Q. What do you mean by draw back entries, Mr. McNall?

A. The government repays a portion of the duties on tin plate when the same is exported in the shape of tin cans.

Q. Now, you testified a while ago about this letter here of January 24, 1905, marked Exhibit number 3, relating to changes in Mexican salaries. You stated in this letter, "I have been over this matter with Mr. Van Beuren, and as I telegraphed you to-day, he agrees with your suggestion that these changes be made as effective as of

January 1st." You stated that you knew at that time that Mr. Van Beuren was connected with the Waters-Pierce Oil Company in some way, or was a stockholder in it?

A. I thought he was.

Q. And you also thought that the Standard Oil Company of New Jersey had an interest in it?

A. Yes.

Q. At whose request did you submit this salary list to Mr. Van Beuren?

A. I don't know as I was requested by any one.

Q. Was the salary list sent to you?

A. Yes, sir, it was sent to me.

Q. Did any one request you to submit it to him?

1059 A. I do not remember that they did.

Q. What was the purpose of submitting the salary list to him?

A. I submitted other matters to Mr. Van Beuren.

Q. I understand, but I want to know about the salary list.

A. I thought he ought to know what was proposed, and I have his suggestions in regard to them.

Q. And have his approval of it?

A. Approval or suggestions.

Q. Did he approve the salary list that was submitted to him?

A. I believe he did from that letter.

Mr. ALLEN: There is a correction there that he makes—I don't know whether it shows in that copy or not, Judge. I read it just as he corrected it.

Judge STEDMAN: There is nothing shown here.

Mr. ALLEN: "Did he approve the salary list that was submitted to him? Answer—I believe he did from that letter." You will see he has initialed it and struck out the "don't." This is the original, you understand.

Q. Did he ever offer any objections to any lists that you submitted to him?

A. I don't remember that he did.

Q. Did you ever submit any of these salary lists to the Standard Oil Company or any of its representatives during the time you were there?

A. No.

Q. You don't know what Mr. Van Beuren did with the letter?

A. I do not.

Q. You don't know whether Mr. Van Beuren submitted it to any of the officers of the Standard Oil Company?

A. I do not.

Q. Now, I will refer you to a letter about which you testified in your cross examination concerning an account with Walter

1060 Jennings, Agent, at 26 Broadway, marked Exhibit number 30. I believe you identified that account, did you not, Mr. McNall?

A. I identified the letter.

Q. This account, the balance due on it, shows to be $557.38, does it not, Mr. McNall?

A. Yes.

Q. And it is attached to a letter in which you say, "We enclose herewith itemized statement of May account with balance in our favor of $557.38, for which kindly remit checks as follows: In favor of Atlantic Refining Company, $470.90; and in favor of the Standard Oil Company of New York, $86.48." Now, I will ask you to examine that and say whether or not that letter does not refer to the particular account that is attached to it?

A. I think that it does.

Q. Now, then, you bought goods from Walter Jennings, did you not, for the Waters-Pierce Oil Company?

A. I bought goods from offices in the building that may have been invoiced from Walter Jennings, Agent.

Q. Now, then, did you write a letter here to the Waters-Pierce Oil Company in which you asked them to remit checks to the Atlantic Refining Company for $470.90, and to the Standard Oil Company of New York for $86.48, to cover an account made with Walter Jennings? Explain how that is, Mr. McNall, that Mr. Jennings—this account with Walter Jennings should be paid to the Standard Oil Company of New York and the Atlantic Refining Company?

A. I believe that Mr. Walter Jennings was agent for the two companies covered by that letter, and that the accounting department requested payment, as requested in that letter.

Q. And you so directed the Waters-Pierce Oil Company to make payment in accordance with that understanding?

A. Yes, sir.

1061 Q. Now, then, this letter was written June 16, 1902. You stated to Judge Priest that, in explanation of the word "our" in this letter, that that was evidently copied from a memorandum. Have you the memorandum, Mr. McNall, that that was copied from?

A. No.

Q. Have you seen this memorandum since this letter was exhibited to you, two days ago?

A. I have not.

Q. Then upon what do you base the judgment that that was copied from a memorandum?

A. Simply from what occurred occasionally, as I remember now.

Q. Well, state what that occurrence was?

A. Occasionally I would receive a memorandum from some accounting department, requesting payment of an account or enclosing a statement of an account, and when so received I transmitted them to the home office.

Q. Well, did you transmit that memorandum in this case?

A. I presume I did.

Q. Now, since exhibiting to you these letters two days ago, you have gone over them all carefully, have you, Mr. McNall?

A. I have read them, yes.

Q. Have you had any consultation with the counsel for the defendant here concerning these letters?

A. No.

Q. You have not talked with him at all about it during the last two days?

A. No.

Q. Now, when you received the requisitions for these goods covered in this invoice, shown in this invoice, with whom did you file the order?

A. I don't remember, Mr. Lightfoot.

1062 Q. Look at the invoices; it says "star transfer." What is meant by "star transfer?"

A. I don't know.

Q. What is meant by "Scranton?"

A. I don't know what that means.

Q. Is that goods shipped from some other point?

A. It is possible, but I don't remember.

Q. You don't remember who you filed the order with?

A. No, I do not remember who I filed those orders with.

Q. Now, such accounts as these were rendered monthly to you, were they not, Mr. McNall?

A. No.

Q. How often?

A. Only occasionally; I do not remember of receiving but very few.

Q. Now, the crude scale wax that was referred to in the letter a little while ago, you say that was purchased from the lubricating department in the building?

A. Yes.

Q. The lubricating department of the Standard Oil Company?

A. Well, it is a lubricating department; I don't know who they represent.

Q. You knew all the time that you were connected with the Waters-Pierce Oil Company as its commercial agent at 26 Broadway, that the Standard Oil Company of New Jersey was a stockholder in that concern, did you not, Mr. McNall?

A. I did not know it; I had the impression they were interested in it.

Q. Well, that was your information, was it not?

A. Yes, my information.

1063 Q. Now, then, when did you find out, Mr. McNall, that Mr. Van Beuren was a stockholder and interested in the Waters-Pierce Oil Company?

A. I don't remember.

Q. How did you find it out?

A. I don't remember that.

Q. Did Mr. Van Beuren tell you so himself or Mr. Pierce?

A. I can not say.

Q. Where did you meet Mr. Van Beuren when you submitted these different matters to him?

A. He called at the office.

Q. He called at your office?

A. Yes.

Q. How often did he call at your office?

A. Occasionally; I don't remember how often.

Q. Well, just approximate it.
A. I could not even approximate it, Mr. Lightfoot.
Q. What relation is Mr. Van Beuren to Mr. John D. Archbold?
A. I have heard that he was his son-in-law.
Q. Mr. Archbold, he has an office at 26 Broadway, does he not?
A. Yes, sir.
Q. What company is he connected with there?
A. I don't know.
Q. Have you any information on it at all?
A. I have no information.
Q. What business is he in there?
A. He is connected with the oil business.
Q. I will ask you if that is not the fact, that he is one of the higher officials of the organization at 26 Broadway?
A. I believe he is.

"Judge PRIEST: What organization do you mean?
"Mr. LIGHTFOOT: I can not be more specific. If the witness will give me a little more definite information, I will try to be more specific."

1064 Q. You don't know what company he is connected with or what companies?
A. No, I do not.
Q. When did you learn, Mr. McNall, that Mr. Van Beuren was a stockholder in the Waters-Pierce Oil Company?
A. I don't remember.
Q. When did you learn that the stock held in his name was owned by the Standard Oil Company of New Jersey?
A. I never knew it.
Q. Did you ever hear that?
A. I think I saw something about it in a newspaper.
Q. Have you heard some of the officers or people at 26 Broadway say anything about it?
A. I don't remember.
Q. Did you ever hear Mr. Pierce say anything about it?
A. I don't remember ever having heard him say anything about it.
Q. Then, how did you know that he was a stockholder at all?
A. I learned it from some source.
Q. Don't you know what source you learned it from?
A. I don't remember now.
Q. Well, how long did you continue to transact business for the Waters-Pierce Oil Company with Mr. Van Beuren?
A. Up to the time, I think, that I left their employ.
Q. Well, now, when did you commence?
A. That I can not say.
Q. To refresh your memory, I will ask you if it was not during the year 1904, some time during the year 1904?
A. It may have been.
Q. You had conferences and businesses with the Standard Oil Company of New Jersey, the other stockholder of the Waters-Pierce

Oil Company, did you not, during the time you were employed there?

A. I don't remember any conferences; I may have been
1065 asked questions by some of the representatives.

Q. What representatives of the Standard Oil Company of New Jersey asked questions and asked for information?

A. I don't know who the men are connected with the Standard Oil Company of New Jersey's organization.

Q. You knew which ones asked you questions, did you not?

A. Yes.

Q. Which ones asked you questions?

A. I have been asked questions by Mr. H. M. Tilford, and possibly others.

Q. And Mr. W. H. Tilford?

A. I don't remember of his ever asking me anything.

Q. Did you ever submit any reports or letters to Mr. W. H. Tilford received from the Waters-Pierce Oil Company?

A. I don't remember of ever having done so.

Q. Well, to whom did you submit these letters and reports, Mr. McNall?

A. I did not submit letters and reports to any one.

Q. When information was desired by the Waters-Pierce Oil Company from the Standard Oil Company of New Jersey, to whom did you apply for it?

A. Well, whatever information they wanted, I would obtain from parties who I thought could give it.

Q. Well, name some of the parties now that you were in the habit of asking information from?

A. I have asked for information from Silas H. Paine and Mr. H. M. Tilford and the supply department.

Q. Well, who is at the head of that?

A. I don't really know who is at the head of it.

Q. Well, who was at the head of it?

A. I understand it was Mr. T. H. Wheeler, but I am not positive of that, that he is at the head of that department.

Q. Did you ever ask for any information from Mr. H. A. Hutchins?

1066 A. No, I think not.

Q. He has an office at 26 Broadway, has he not?

A. I believe he has.

Q. Has Mr. Rockefeller an office there, John D. Rockefeller?

A. I think not.

Q. John D. Rockefeller, Jr., has he an office there?

A. I think he has; I see him occasionally.

Q. I will get you to look at this telephone directory here, Mr. McNall (handing witness book); it is a telephone directory of the telephone system of New York, is it not?

A. Yes, sir.

Q. Is it the one in general use at this time or has been during this year?

A. It purports to be.

Q. What date has it?

A. February 1st, 1907.

Mr. ALLEN: There is another correction there. It was put down first "January," and then changed to "February."

Q. I will get you to look at that and call off the concerns there and departments that can be reached by telephone at 26 Broadway that are listed under the head of the Standard Oil Company of New York. Just call off that list.

A. (Reading:) Lighterage department; supply department; O. T. Waring; fuel oil department; Acme Works; freight department; James G. Newcomb, Agent; Bergenport Chemical Works; Thompson & Bedford Department; Oswego Works; wick department; naphtha department; stationery department; J. D. Rockefeller, Cashier; Philip Ruprecht, and James Smith.

Q. Now, that also shows that all of those officers are located at 26 Broadway, does it not?

A. Yes, sir, I should say it did.

1067 (By Judge PRIEST:)

Q. It shows there the departments of the Standard Oil Company of New York that have a common telephone?

A. Yes, sir.

(By Mr. LIGHTFOOT:)

Q. Mr. McNall, do you know Mr. H. M. Flagler?
A. Slightly.
Q. Has he an office at 26 Broadway?
A. Yes.
Q. Do you know Mr. G. F. Vilas?
A. I don't know him.
Q. You don't know any Mr. Vilas?
A. No, sir.
Q. Do you know Mr. Charles T. White?
A. Yes, sir, I know Mr. Charles T. White.
Q. Has he an office at 26 Broadway?
A. Yes, sir.
Q. What business is he in there?
A. Transfer clerk, I think.

(By Mr. ALLEN:)

Q. You mean stock transfer clerk?
A. Yes, sir.

(By Mr. LIGHTFOOT:)

Q. And transfers the stocks of these various corporations?
A. The stock of the Standard Oil Company.
Q. Is he not Secretary of the Standard Oil Company of New York?
A. I don't know what companies he may be connected with.
Q. Now, the Continental Oil Company referred to in your direct examination as the Continental Oil Company of Denver, is that the company organized under the laws of the State of Iowa?
A. I believe it is.

Q. With its principal office at Denver, Colorado?
1068 A. Business office, yes.
Q. Has the Standard Oil Company of Ohio a representative at 26 Broadway?
A. Not that I know of.
Q. Mr. H. H. Rogers, did you know him?
A. Yes, sir.
Q. Has he an office at 26 Broadway?
A. Yes, sir.
Q. Mr. W. H. Tilford?
A. Yes.
Q. He has an office there?
A. Yes, sir.
Q. Mr. H. M. Tilford?
A. Yes, sir, he has an office at 26 Broadway.
Q. Mr. Silas H. Paine, he has an office there, you have already testified?
A. Yes, sir.
Q. And John D. Archbold, he has an office there?
A. Yes, sir.
Q. Who are the general attorneys for the Standard Oil Company at 26 Broadway?
A. I don't know; I understand Mr. M. F. Elliott is.
Q. How long has he been there?
A. I don't know how long, Mr. Lightfoot; a number of years.
Q. Since 1900?
A. I think so.
Q. Do you know Mr. S. C. T. Dodd?
A. I knew Mr. Dodd.
Q. He is dead now, isn't he?
A. Yes, sir.
1069 Q. He had an office also at 26 Broadway?
A. Yes.
Q. What position did he hold?
A. I understand he was attorney for the Standard Oil Company.

Mr. ALLEN: We don't offer the next two questions on page—third page from the last—by Judge Priest, two questions by Judge Priest, and the objection follows by myself.

Q. And is it a fact that the Waters-Pierce Oil Company charged for oil furnished the ships at the request of the Standard Oil Company of New York its current prices for the sale of oil at that place?
A. Yes, sir.
Q. And charged that to the Standard Oil Company of New York and bills were forwarded against the Standard Oil Company of New York?
A. I understand that is so.

(By Mr. LIGHTFOOT:)

Q. Did you have any information about what the current prices of the Waters-Pierce Oil Company for marine oils delivered at the ports in Texas were, Mr. McNall?

A. I don't remember that I did.

Q. Well, then, how did you know that the Waters-Pierce Oil Company charged those steamers or the Standard Oil Company their current prices for oil delivered to steamers?

A. The Standard Oil Company of New York charged the current——

Q. (Interrupting.) No, I said, how did you know that the Waters-Pierce Oil Company charged the Standard Oil Company of New York their current prices for marine oils delivered to steamers at Galveston, if you don't know what their current prices for marine oil were at those ports?

A. I believe I so instructed them to at one time.

Q. You so instructed them to—— (Last question repeated.)

A. I believe I so instructed them to, at one time. (Pausing.) Requested them to, instead of instructed.

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Q. What did you request them?

A. As I remember it, I asked them to make deliveries of marine oils to vessels and bill those deliveries to the Standard Oil Company of New York, Marine Department, at their current prices; I think I have a recollection of doing that.

Q. Now, I will ask you to refresh your memory, if that don't refer to contract oils, oils for which the Standard Oil Company of New York had contracts with vessels touching at those ports?

A. Not necessarily.

Q. I will ask you, then, if they had any instructions with reference to illuminating oils for delivery to steamboats—I mean, to vessels at Texas ports?

A. I think I requested them to follow a similar custom in billing.

Q. Then, it is your recollection that the Waters-Pierce Oil Company had instructions to deliver all oils to vessels touching at ports there for the account of the Standard Oil Company of New York, is that true?

A. Not on all oils.

Q. For which oils, then?

A. For oils which the marine oil department ordered from them.

Q. They would be delivered before the marine oil department would order them, wouldn't they?

A. If we received instructions that a vessel was coming there before she arrived at a port in Texas, they would be requested to deliver anything to that vessel that she might require and charge *if* to the marine oil department.

Q. Now, suppose that the vessels reached there before you knew it and needed oil, what would be the custom then?

A. As I understand it, they would sell the oil to the ships and collect the money for it.

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Q. And not bill it out to the Standard Oil Company?

A. No.

Q. And on all oils delivered to them?

A. On all oils delivered to a ship, and not ordered of the Standard Oil Company, Marine Department, they would bill to the ship and collect the money from the ship.

Mr. ALLEN: There is a correction there that he initials, also.

Q. Have you any knowledge of any such transaction ever taking place, Mr. McNall?

A. I have a general business idea that that took place.

Q. By whom were you informed of such transactions that they did take place?

A. It came out in correspondence with the home office.

(By Judge PRIEST:)

Q. The home office of the Waters-Pierce Oil Company, you mean?

A. The home office of the Waters-Pierce Oil Company.

Judge STEDMAN: We offer the third page from the last of McNall's deposition, two questions propounded by Judge Priest and answered by the witness.

Q. I only want to call your attention to one fact in connection with your re-examination in chief. You spoke of the Waters-Pierce furnishing to the Standard Oil Company of New York some oil at ports in Texas?

A. Yes.

Q. You said that that was a sale by the Waters-Pierce Oil Company to the Standard Oil Company of New York. It having no oil in Texas and doing no business there, it requested the Waters-Pierce Oil Company to furnish to ships that might touch at certain ports and charge to it?

1072 Mr. ALLEN: To that question and answer we object as being leading and suggestive, and calling for a conclusion and not the facts, and states the information of the witness,—the same objection that was made at the time.

Judge STEDMAN: In response to that objection of counsel, I will say that witness was called by the other side, and this is cross examination by the counsel for the defendant in the case. Furthermore, as to the nature of the answer, I do not think it is subject to the criticism that it is merely a conclusion of the witness. They are facts that he relates.

The COURT: The objection is overruled.

A. Those are the facts.

Mr. ALLEN: Now, plaintiff next offers in evidence the agreement attached to the petition of plaintiff and marked Exhibit "C". It is an agreement made and entered into in the city of Cleveland, Ohio, on the 5th day of October, 1894, by and between the Eagle Refining Company and others, and A. W. Clem of the city of Dallas, and the Waters-Pierce Oil Company, a corporation organized under the laws of the State of Missouri, and then the additions and acceptances thereto.

Judge STEDMAN: We desire to offer the objection to the document proposed to be placed in evidence, (1) that those documents were executed long anterior to the creation of this defendant, and long anterior to the enactment of the statute under which this suit is being prosecuted; (2) because the testimony offered is immaterial and irrelevant, and does not tend to establish any issue in this case; and (3) because those documents evidence an executed contract

and can not be introduced in evidence in this case as affecting the matters to which this suit relates. Those documents evidence a contract that was consummated long prior to the organization of this defendant, and long prior to the enactment of these
1073 laws, and being an executed contract it can not be maintained that that matter was continued in effect by the parties; and, further, that those matters were adjudicated in the prior Waters-Pierce Oil Company case in this court, as set up in our answer.

Mr. ALLEN: The contract was dated the 5th day of October, 1894. It is an agreement that these parties named as parties of the second part would not for a period of fifteen years do certain things. (Reads from contract.) A part of the consideration, as is shown, for that agreement is the employing of one A. W. Clem, who is a party to the instrument, as manager to conduct and carry on this business, and the agreement we shall offer in connection with it shows that this contract was carried out, and we propose to show that the present corporation carried out this contract for four years after it was organized.

The COURT: What do you mean by "carrying it out?"

Mr. ALLEN: By paying Clem the sums of money called for in the contract, after that time keeping him on a salary, and letting him run the business in the name of the Eagle Refining Company in accordance with the agreement here stated. I do not know whether Your Honor is familiar with all the details of this contract or not, but there are several details, among them being one that Clem shall continue as manager of the business.

The COURT: Do you propose to show that the defendant managed and controlled the business of the Eagle Refining Company in Texas under the name of the Eagle Refining Company subsequent to May 31, 1900?

Mr. ALLEN: Yes, sir, until 1904, we propose. Now, here is that part that I wish to call Your Honor's attention to. "This memorandum of agreement, made and entered into this 5th day of October, 1894, by and between the Waters-Pierce Oil Company and A. W. Clem"——

Judge STEDMAN: We prefer for the gentleman not to read
1074 that in the presence of the jury.

The COURT: It has all been read to the jury as a part of the pleadings.

Mr. ALLEN: We say this is all one transaction, and this is a memorandum we offer in connection with it, based upon the same consideration, that the first party has employed and by these presents does employ, etc. (reading from contract).

Judge STEDMAN: We desire to add specifically the objection to the arrangement with Mr. Clem, that it is shown by the document that the arrangement expired within two years after it was made in 1894. Therefore, it was an executed contract in 1897. That is in addition to the other objections.

Mr. ALLEN: The acceptance,—this is in the shape of a letter to W. H. K. Rose, General Manager of the Eagle Refining Company.

We propose to show that they carried out—that there was a transfer, and, of course, so far as the property was transferred that became an executed contract, but we propose also to show that they continued the business under the name of the Eagle Refining Company, ostensibly as an independent concern, in accordance with this agreement and in accordance with the provisions they kept Clem on the pay-roll, and continued to pay him, and continued to carry it on and conduct the business just as they had been doing theretofore, until 1904,—the present company.

The COURT: What was the date of the former suit, or what was the issue with reference to this contract?

Mr. ALLEN: Of that I am not advised. That is a matter of defense, however, as far as that is concerned.

The COURT: Ordinarily it would, but in that case the judgment is a record of this Court, and the Court judicially, but not personally, knows.

Mr. ALLEN: That judgment in that case was rendered in
1075 1897, but just what issue was made about this I am not personally familiar.

Judge PENN: That was withdrawn from the jury by the instruction of the Court, the jury instructed that that was not a violation of the law, and that issue was withdrawn. The matter is reported in full in the 44th Southwestern Reporter.

The COURT: Admitting it was withdrawn by the charge of the Court, I do not know what violation of the law was charged and predicated on this agreement.

Judge PENN: Our recollection is that the entering into of this agreement was a violation of the anti-trust law.

Mr. ALLEN: We admit that, that it was that the entering into of this agreement was a violation of the anti-trust law, and that the Court held that it was not, but still that would not affect the cause of action as we allege it in this case. The courts have repeatedly held that the Legislature may, after a contract has been made, provide that the carrying out of a contract of that nature may be a violation of the law, where it is a continuing contract and calls for something to be done in the future by the parties; that if they carry out the provisions of that contract thereafter, that then it becomes an offense, just as the Supreme Court of the State held in the case of the State against the American Express Company, that went up from this Court, went off on demurrer in Your Honor's Court. They held there, Your Honor will remember, that all of the contracts that were set up as violations of the law were executed prior to the passage of this anti-trust case. We charge that they continued to carry out those contracts. They might have been perfectly valid at the time they were entered into.

The COURT: There is no necessity of arguing that. Most of the evidence that has been admitted in this case has been admitted on that theory.

1076 Mr. ALLEN: That is all we are contending for. We expect to show that these exclusive features of the contract were carried out by this corporation after its formation in 1900, and which

was then in violation of the law that went into effect on the first day of January, 1900. Of course, we are claiming no penalties back of that time, back of May 31, 1900, but we propose to show they continued to carry out this contract up until 1904, when by mutual consent it was abrogated.

The COURT: What was the date of the judgment in the prior case?

Mr. ALLEN: 1897, three years before the passage of any anti-trust act that made it a violation of the law. That was under the law of 1889.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon the said agreement between the Eagle Refining Company and A. W. Clem and the Waters-Pierce Oil Company, dated the 5th day of October, 1894, was introduced in evidence.)

Mr. ALLEN: In connection with that, we offer in evidence an agreement signed by counsel, as follows:

"It is hereby stipulated and agreed by and between the counsel in this cause that the agreement signed and entered into by the Eagle Refining Company, S. S. Drake, President, S. S. Drake, A. G. Carpenter, W. A. Smith, William H. K. Rose and A. W. Clem, on the 5th day of October, 1894, and the memorandum of agreement dated St. Louis, Missouri, September 13, 1894, and signed by H. C. Pierce, President, and William H. K. Rose, and the acceptance signed by W. A. Smith, Secretary, dated Cleveland, Ohio, October 1, 1894, and the memorandum of agreement made and entered into in the city of St. Louis on the 5th day of October, 1894, and signed
1077 by the Waters-Pierce Oil Company, by H. C. Pierce, Pt., and A. W. Clem, all of which are attached to plaintiff's first amended original petition in this cause and marked Exhibit C, are true copies of each of said documents and may be offered in evidence in this cause with the same force and effect as if they were originals and properly proven up.

"It is further stipulated and agreed that the said agreements and contracts were executed and carried out; that if the defendant shall produce the originals of said documents, as set forth in Exhibit C as aforesaid, upon the trial of said cause, said originals may be substituted in lieu of said copies, and this stipulation and said orignal documents or this stipulation and the copies herein agreed to, in the event defendant does not so produce said originals, shall be offered in evidence in said cause subject to all legal objections that may be offered against the originals if the same were introduced."

Mr. ALLEN: We next offer a portion of the deposition of S. K. Wheeler. I am going to read the first two or three questions of the direct examination simply to identify Mr. Wheeler, show who he is, and then the other is on page 14 of his examination.

S. K. WHEELER, being produced and sworn on behalf of the Defendant, testified as follows:

Direct examination by Mr. JOHNSON:

Q. What is your age?
A. 40.
Q. What is your occupation?
A. Assistant General Manager of the Waters-Pierce Oil Company.

Mr. ALLEN: Now, then, you can begin the Cross Examination, beginning on page 14 of his testimony. We offer, I think it is all of that cross examination, practically speaking.

Q. You were employed, you say, as general representative
1078 of the company from November, 1903, to June, 1905. During that period, how often did you visit the important cities in Texas?
A. Generally, as a general proposition only once.
Q. Only once during the entire time?
A. Yes, sir.
Q. What were your duties as the general representative in regard to the important cities in Texas?
A. I had authority to extend bulk deliveries, to points where they had not been making them before, and authorizing improvements in the plants.
Q. What were your duties with reference to giving instructions to the managers of the divisions, at that time?
A. I had authority to instruct them in relation to the conduct of our business.
Q. Did you give them instructions at that time as to what prices they should sell at?
A. No, sir.
Q. You had nothing to do with that, at all, at that time?
A. No, sir.
Q. Well, did you have any authority as to instructing them as to what representatives they should employ, in their departments?
A. Yes, sir.
Q. How often during that time had you visited San Antonio, in your capacity as general representative of the company?
A. I think twice.
Q. How often did you visit Dallas during that time, as a representative of the company?
A. Probably three times.
Q. Do you know Mr. Roy Campbell, at San Antonio?
A. Yes, sir.
Q. During that time, or the times that you were there, what was
he doing?
1079 A. He was—I don't know what his employment was at that time.
Q. Did you come in contact with him?
A. No, sir, I did not know him at that time.
Q. Well, did you at any time as a representative of the company know who he was?

A. Not at that time I did not.
Q. Well, at any time?
A. I have, though, recently.
Q. Who is he? What connection has he with the Waters-Pierce Oil Company, or did he have at any time?
A. Of my own personal knowledge, I don't know that he ever had any connection with it.
Q. What is your information? Why did you hesitate?
A. Well, that is very vague. I am not trying to evade the question. My information is very vague. Officially or otherwise I had nothing to do with Mr. Campbell.
Q. You say you were the general representative of the company, with authority to say—govern the employment of the men, at these different places. Don't you know, Mr. Wheeler, that he was in the employ of the Waters-Pierce Oil Company during a portion of this time?
A. I believe he was.
Q. Operating ostensibly as an independent dealer, being paid by the Waters-Pierce Oil Company?
A. Now, that is only hearsay with me.
Q. Well, what is your information on that? You were Assistant Manager part of the time, and the general representative part of the time?
A. During the time I was general representative and visited San Antonio I knew nothing whatever—I was not acquainted with Roy Campbell.
Q. Well, as Assistant Manager, then?
A. I am under the impression that he was an employé of the company.
Q. Do you know under what sort of contract? Did you
1080 ever see the contract?
A. No, sir.
Q. Have you had any information as to what sort of a contract it was?
A. No, sir.
Q. Why did you have him employed ostensibly as an independent concern, and paying him a salary or commission by the Waters-Pierce Oil Company?
A. I don't know.
Q. You don't know?
A. No, sir.
Q. You had nothing to do with that employment?
A. No, sir.
Q. You only know that it is a fact, but you don't know the basis of it or what the original agreement was?
A. No, sir.
Q. Now, do you know Mr. A. W. Clem, at Dallas?
A. No, sir.
Q. Did you ever hear of him?
A. Yes, sir.

Q. Do you know what connection he had at any time with the Waters-Pierce Oil Company?

A. No, sir.

Q. Did you ever hear of his having any connection with it?

A. No, sir.

Q. Do you know anything about the Eagle Refining Company, at Dallas?

A. Only by name.

Q. Did you ever visit or go to see that company when you were there as the representative of the company?

A. No, sir.

Q. Did you ever have any information about it whatever?

A. No, sir.

1081 Q. Why not? Why didn't you?

A. Well, it was a matter that I knew nothing about. I know nothing about it; I had no occasion to visit the Eagle Refining Company, or any other company, except our own.

Q. You did not know that the Waters-Pierce Oil Company owned it and was operating it until recently?

A. No, sir.

Q. You knew nothing about that?

A. No, sir.

Q. Now, as general representative of the company up to June, 1905, did you have anything to do with the furnishing of prices to the different division managers?

A. No, sir.

Q. You had nothing to do with that until you got to the General Manager's office?

A. Yes, sir.

Q. Who is the General Manager?

A. C. P. Ackert.

Q. How long has he been General Manager, do you know?

A. No, sir, I do not.

Q. When did your connection begin with the company?

A. In May, 1902.

Q. Whose supervision was you under?

A. I was under the supervision of Mr. E. M. Tolliver.

Q. E. M. Tolliver at Houston?

A. Yes, sir.

Q. You were in that employ only a short time?

A. Yes, comparatively speaking.

Q. When you went into the employ in November, 1903, whose supervision were you under?

A. C. P. Ackert.

1082 Q. He was General Manager at that time?

A. Yes, sir.

Q. Afterwards, in June, you came to St. Louis?

A. Yes, sir.

Q. And made your headquarters here?

A. Yes, sir.

Q. As the Assistant General Manager?

A. Yes, sir.

Q. To Mr. Ackert?
A. Yes, sir.
Q. And C. P. Ackert is now General Manager?
A. Yes, sir.
Q. And has been ever since your second connection with the company?
A. Ever since my first connection, he has been General Manager.
Q. I understood you to say that you did not know that he was General Manager?
A. I say I don't know how long he has been General Manager.
Q. Then he was General Manager since you first went with the company?
A. Yes, sir.
Q. Mr. Ackert is the man that during this time that you speak of, as General Manager, has promulgated the prices at which oils of different kinds should be sold by the agents in Texas?
A. Yes, sir.
Q. At different points?
A. Yes, sir.
Q. Where is Mr. Ackert?
A. You mean at the present time?
Q. Yes, sir.
A. He is in Houston.
Q. Do you know—how long has he been there?
1083 A. I think he reached there yesterday morning.
Q. His headquarters are here?
A. Yes, sir.
Q. How long has he been away?
A. He left last Thursday afternoon.
Q. Do you know when he will return?
A. No, sir, I do not.
Q. During his absence who has charge of his department?
A. I have charge of it.
Q. Have you in your custody and control any documents, books, or record of any sort that shows the prices at which the different kinds of oils were sold at the different points in Texas for the years 1900 and 1907,—down to this time, inclusive?
A. I think so.
Q. Will you——
A. It will take some time to go back to 1900. I believe we have them, though.
Q. Will you produce the records? What is it in the shape of—a memorandum, book, or what?
A. When the manager is instructed as to the selling prices, he issues a schedule which goes to the local agent, and the carbon copy of that schedule comes to this office and is part of our files. And then——
Q. Where does that come from?
A. From the division headquarters.
Q. Well, the General Manager, I understood, promulgated those prices?
A. No, the Manager promulgates it to the agent.

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Q. Well——

A. The General Manager instructs the Manager.

Q. Well, the General Manager promulgates the prices in the first instant, doesn't he?

A. Yes, sir.

1084 Q. How does he do that?

A. By letter or telegraph.

Q. By letter? Now, what record do you make at the time of the promulgation of those prices, of what prices are promulgated?

A. A carbon copy is kept of any change that is made in the prices, and that carbon copy is retained up till the revised schedule is received.

Q. Now, those carbon copies—you make no permanent record of it, then?

A. The revised schedules are sent here and kept in the files, and then the old schedule is filed away.

Q. The whole schedule is filed away? No permanent record in a book or anything of that sort is made of the different changes in prices?

A. Well, we have a record of changes that have been made, but I don't think that record goes back any earlier than 1904.

Q. Is that in the shape of a permanent record?

A. Yes, sir.

Q. In book form?

A. Yes, sir.

Q. Does that show the various prices at which you sold the various kinds of oils at different points in Texas during the years 1904, 1905, 1906 and 1907 up to the present time?

A. Yes, but they only show the refined oil and gasoline.

Q. The refined oil and gasoline?

A. Yes, sir.

Q. You do not make it to cover the lubricating oils and greases, or anything of that sort?

A. No permanent record, no, sir.

Q. Now, the record that you speak of, does that show the various schedules which were promulgated during the year?

A. Every time there is a change in the schedule it is noted

1085 in the book.

Q. It is noted in that book?

A. Yes, sir.

Q. Will you produce that record book before the Commissioner so that it may be examined by the counsel for the State, or furnish a copy or abstract from it, showing the different prices at which the oils have been sold by the Waters-Pierce Oil Company during these years, 1904, '5, '6 and '7 up to the present time, at the different points in Texas?

"Mr. JOHNSON: This is a matter that the witness has no control over. We object to it, further, as being a matter for counsel to determine whether papers will be produced or not. Also, it is the duty of counsel for the State, if they want any such records produced, to give notice under the statutes for its production."

Q. I understood you to say that that record was under your control as Acting General Manager, during the absence of Mr. Ackert?

A. It is a part of the office record.

Q. Part of the office records of which you are the head of it during his absence. Is that not a fact?

A. Yes, sir.

Q. It is in your control, then?

A. Yes, sir.

Q. We have heretofore notified the President of your company, Mr. Wheeler, to produce for our examination all books and records. Now, then, we notify you at this time, as being the head of the department, who has the care, custody and control of the book, to produce it for our examination. And we request you to produce it here, so that we may go over it and get from it such detailed information as you testify it contains.

"Mr. JOHNSON: We object to that. The witness is not required to say what he will or what he will not do. That is under the control of counsel,—not the witness. If the State wants those
1086 papers produced, the statute prescribes the mode in which it should be done. This is not pertinent to this inquiry,—at least so far as this witness is concerned."

Q. What do you say about that, Witness? Will you or will you not produce that record as asked for? I say, what do you say about it? Will you or will you not produce that record for examination?

A. I refuse to produce it.

Q. You stated that prices are promulgated from the General Manager's department to the division managers. Who furnishes those prices to him, do you know of your own knowledge?

A. To the General Manager?

Q. Yes.

A. The General Manager, in consultation with other officials, determines the price.

Q. Is that based upon hearsay, or actual knowledge?

A. It is based on reports and recommendations from the local managers, the division managers.

Q. Well, none of the officers, then, of the Waters-Pierce Oil Company, except the managers, have anything to do with fixing the prices?

A. The General Manager, you mean?

Q. I mean the General Manager. None of the officers here?

A. Oh, yes, I say the General Manager, in consultation with other officers of the company.

Q. They fix the prices?

A. They fix the prices.

Q. And the General Manager promulgates them?

A. Yes, sir.

Q. Well, that is the way I understood it. Now, did you ever participate yourself in those consultations?

A. Yes, sir, in the absence of the General Manager.

Q. Upon what are those prices based? What consider-
1087 ations enter into your consultation upon which you base the prices?

A. The change in the price is determined by the local conditions. If other oil companies make a lower selling price than we have been maintaining, and we find it necessary to meet that price, to protect our business, that price is met.

Q. In other words, changes of prices are almost always affected by competition from other companies, aren't they?

A. In a great many instances, yes, sir.

Q. Well, what other consideration influences you besides competition in lowering prices? What other consideration? Is that the only one? Why do you hesitate about answering that question, Mr. Wheeler? You say you participated in these consultations and know what was said and done there?

A. There are a great many instances where the prices are regulated,—either advanced or lowered,—without the influence of competition.

Q. Well, of course, in those instances then what causes the raising or lowering of this price? Why do you do that?

A. Well, it is done through the judgment of the officers, as to what the proper price should be.

Q. Well, but you consult about that, and some reason is given for it, isn't there, in this consultation?

A. Yes, sir.

Q. What is the reason, then? What reasons are given, when that is done?

A. The reason may be that it is considered that the price in itself is higher than it should be. It may be——

Q. Now, then, name one place, one time, one price, that you lowered, when it did not come from competition?

A. I could not do that from memory.

Q. Well, can you by refreshing your memory?

1088 A. I think I can.

Q. Give us a memorandum of that, can you?

A. I think I could.

Q. Will you do that when you are excused here temporarily?

A. I will.

Q. Now, did the cost of the commodity have any effect at all upon your fixing or changing the price?

A. Yes, sir.

Q. What effect does that have?

A. The cost of the commodity usually forms a very large basis as to what the selling price will be.

Q. Isn't that, aside from competition, the principal ground for changing the price?

A. Yes, I should say it was.

Q. Did you have anything to do with the purchase of oils? Is that in your jurisdiction? I mean oils that you sell?

A. No, sir.

Q. What department is that in? Who is at the head of that department? I suppose your department is the one that distributes and sells the oil?

A. Yes, sir.

Q. Yours is the Sales Department, as a matter of fact?
A. Yes, sir.
Q. Now, when you want certain oils, of any kind, shipped to any point in Texas, how do you get it shipped there?
A. The order is placed at the refinery, where the supply comes from.
Q. Who places it there?
A. It is placed there by Mr. Finlay, the Vice President.
Q. Placed there by Mr. Finlay. You have nothing to do with that part of it?
A. No, sir.
1089 Q. You make requisitions upon Mr. Finlay, stating where you want the oil, and the kind you want, and the quantity, and then he acts?
A. Yes, sir.
Q. And you have nothing to do with the purchase of it, or where it shall come from?
A. No, sir.
Q. How long has Mr. Finlay had charge of that part of it?
A. I think for several years.

(Redirect examination by Mr. JOHNSON:)

Q. Isn't it a fact that when the refinery prices are lowered the selling price by the company is lowered?
A. Yes, sir.
Q. When the refinery prices are increased or advanced, the company advances its selling price?
A. Yes, sir.
Q. In Texas?
A. Yes, sir.

(Portion omitted.)

Q. And then there is—enumerate the others?
A. Well, the Eagle Refining Company, about three years, the Lone Star Oil Company for several years, the Oriental Oil Company for several years, and the Southwestern for several years.
Q. What facilities have those different companies for handling oils and supplying the trade in Texas?
A. Do you want me to describe it in detail?
Q. Yes, in a general way, I don't want to go too much in detail.
A. The Eagle Refining Company have a few agencies in Texas, where they carry refined oil in bulk.
Q. Do you know how many, Mr. Wheeler?
A. No, sir, I don't—probably not over six or eight.

1090 (Recross-examination, by Mr. ALLEN.)

Q. Mr. Wheeler, what kinds of oil do you sell in Texas of the refined oils to the trade? What brands? What do you call them?
A. The best oil is called Eupion.
Q. What other?
A. The second grade is called Brilliant.

Q. What is meant by Prime White or Water White?
A. Prime White is practically synonymous with Brilliant, and Water White is an intermediate grade between Brilliant and Eupion.
Q. And what is S. W.? What does that stand for?
A. S. W. is also synonymous with Brilliant.
Q. Now, you speak of an oil as 120 flash or 150 flash?
A. Yes, sir.
Q. What do you mean by those terms?
A. The flashing point of an oil is determined by the degree of heat to which you can heat the oil when it will form a gas that will flash with a match.
Q. In other words, that represents a degree of temperature that the oil will stand before it will ignite from heat?
A. Before it will light, yes, sir.
Q. Now, what flash is the oil that you sell in Missouri, the ordinary burning oil?
A. That is 150 fire test.
Q. What is that you sell in Texas?
A. There is a difference of about 20 degrees between flash and fire. The flash is just where the gas will ignite and then go out, and the fire test is where the gas is formed so that the flame is continuous.
Q. So that it will ignite the whole bulk?
A. Yes, sir, and it continues to burn. Usually there is a difference of close on to 20 degrees between the flashing point and the firing point.
1091 Q. What is the oil that is sold in Texas as to the flash and fire test?
A. It is about 112 flash, that would make about 132 fire.
Q. It is 112 flash which would make about 132 fire?
A. Yes, sir.
Q. And in Missouri it is 150——
A. Fire. It would be about 130 flash.
Q. The reason for making that difference is that there is a law in Missouri prescribing the fire test?
A. Yes, sir.
Q. And there is none in Texas?
A. No, sir.

Mr. ALLEN: Clay Arthur Pierce, examination beginning at the beginning, page 195, a witness produced by the defendant and examined by Mr. Johnson, and we offer his direct examination also.

Q. State your name in full, please?
A. Clay Arthur Pierce.
Q. Your age?
A. 33.
Q. Your residence?
A. No. 40 Vandeventer Place, St. Louis, Missouri.
Q. Your occupation?
A. President of the Waters-Pierce Oil Company.
Q. How long have you been President of the Waters-Pierce Oil Company?

A. Since June, 1905.

Q. Since that time you have actively discharged the duties of President of the company?

A. I have.

Q. And managed and controlled its affairs as far as a
1092 President can manage and control?

A. Yes, sir.

(Objected to as leading and suggestive.)

Q. Well, what have been your duties as President of the company since your election?

A. I have been the executive head of the company, to manage its business affairs, all details connected therewith, and to take final executive action on all business of any nature pertaining to the company.

Q. Who did you succeed as President of the company?

A. Mr. Andrew M. Finlay.

Q. You were employed by the company before you were made its President, were you?

A. I was first employed by the company in the Spring of 1898 as Assistant Treasurer.

Q. That was the old firm, the Waters-Pierce Oil Company?

A. The old firm, the Waters-Pierce Oil Company. I was re-employed as Assistant Treasurer by the new company organized in 1900 and continued as Assistant Treasurer until June, 1905, when I was elected President. Just two months previous to that time, however, I was made Acting President, and I occupied that position for two months.

Q. What were your duties as Assistant Treasurer? What duties did you perform?

A. I performed such duties as would naturally fall to the position of Assistant Treasurer in the Treasurer's Department, and in addition I sat on the Executive Committee as Secretary of that committee, and a member of the committee from the time of its formation until the committee was disbanded.

Q. When was the Executive Committee organized?

A. If I remember correctly, it was organized in 1900. I am not sure as to the date.

1093 Q. And it existed down to what time?

A. Until the Fall of 1904, I believe.

Q. What have you had to do since the organization of the Executive Committee with the fixing of prices at which the company sells its commodities in the State of Texas?

A. Since the organization of the Executive Committee I have been actively one of usually three who have determined or fixed the selling prices in the State of Texas.

Q. Who were the other members of that committee? I mean who were the other parties—not the Executive Committee, but who were the other parties that acted with you or that you acted with in fixing prices of sales of oil in Texas and other commodities?

A. The entire Executive Committee while it was in session acted finally upon the fixing of prices of a sub-committee, composed of

Andrew M. Finlay, then President, C. P. Ackert, General Manager, and myself as Assistant Treasurer, examined schedules which were exhibited to the Executive Committee for their final approval with our recommendation.

(Portion omitted.)

(Cross-examination by Mr. ALLEN:)

Q. Where the order or requisition for supplies were ordered to be sent from the refinery of the Standard Oil Company at Whiting, Indiana, where is that order sent?

A. Direct to Whiting, Indiana.

Q. And is that true of the Atlantic Refining Company also?

A. It is true of the Atlantic, and the Sugar Creek, and all the other refineries. I presume you are acquainted with them.

Q. How about the Security Oil Company at Beaumont?

A. Sent direct to the Security Company at Beaumont.

Q. Do you have any oils of any consequence shipped to you from Whiting, Indiana, or Sugar Creek or Neodesha to Texas?

1094 A. We have sent a small amount of Northern gasoline from the three refineries to Texas, because of the inability of the Southern refineries to meet the supply.

Q. That is gasoline?

A. Yes, sir.

Q. But the bulk of the supplies are received from the Corsicana refinery and the Security Oil Company at Beaumont for Texas sales?

A. For Texas, Louisiana, Oklahoma, Indian Territory and the Southern part of Arkansas, we purchase what we can from the Gulf Refinery and Texas Refinery Company as they are able to supply.

Q. Are they Standard Oil refineries?

A. I knew nothing about that.

Q. You have no information of those two?

A. Nothing whatever.

Q. Mr. Pierce, do you know anything about the so-called division of territory heretofore testified about by your father, H. Clay Pierce, based upon the original agreement made by the Standard Oil Company, giving to the Waters-Pierce Oil Company the territory that includes Texas?

A. Nothing whatever.

Q. You know nothing about the original agreement?

A. Nothing whatever.

Q. What do you know about its practical workings since you have been connected as an officer and an active officer of the company so far as the observation of that territory is concerned?

A. I know nothing whatever about the practical workings of any agreement such as you speak of. I know of course that we sell oil in such territory where we are equipped to handle it and sell it, and that there is other territory that we do not sell it.

Q. You know, of course, your father has heretofore testified in the case, of what was originally the agreement or understanding

1095 that was had as to that territory?

A. That I don't know absolutely. I did not read Mr.

Pierce's testimony, throughout, and I was not present all the time at the trial.

Q. Has any question of that sort come up since you have been a member of the Executive Committee, Advisory Board, or President of the company, about a violation of that stipulation, expressed or implied, for adjustment?

A. On our part?

Q. On the part of either the Waters-Pierce Oil Company or the Standard Oil Company or its interests?

A. You mean has any question arisen between the Waters-Pierce Oil Company and the Standard Oil Company?

A. Yes, that has been the subject of discussion by the Executive Committee or the Advisory Board or any other officer, with you as the executive head?

"Mr. JOHNSON: We object to that unless it is in respect to any part of the State of Texas.

"Mr. ALLEN: Of course, I will limit it to that."

A. None has arisen during the time that I was a member of the Executive Committee or since then regarding the State of Texas that I know of.

Q. Now, what portions of the United States does the Waters-Pierce Oil Company and has it during your connection with it, done business? In what portion?

A. In the Southern half of the State of Missouri, in a portion of the State of Illinois immediately East of the Mississippi River, and St. Louis, in all of Arkansas, in all of Texas, in all of Oklahoma and Indian Territory, in a portion of Louisiana West of the Mississippi River, and in all of the Republic of Mexico.

Q. And all of Louisiana West of the Mississippi River, or only a portion of it?

1096 A. Practically all. I think there is a small portion down in the extreme Southwest of the Mississippi River in which we do not operate. That is a very poor part of the country down there, deltas, etc. We never operate in that portion of the country.

Q. Don't you know as a matter of fact, and isn't it your information as the executive head of the Waters-Pierce Oil Company and as member of its Executive Committee during its existence, and as a member of the Advisory Board, that questions have arisen about the territories in Texas? To refresh your memory, isn't it the custom daily almost of the Waters-Pierce Oil Company to supply to customers at Texas ports oils for which they have contracts with the Standard Oil Company?

"Mr. JOHNSON: That is, contracts between steamers and the Standard Oil Company?

"Mr. ALLEN: Between steamers and the Standard Oil Company."

A. I am not entirely informed on that. I know that the Standard has certain contracts with steamship lines.

Q. That makes Texas ports?

A. That makes Texas ports, and that the Waters-Pierce Oil Com-

pany furnishes supplies to them when requested, and it is furnished to them on the Standard Oil Company's account.

Q. And charged to whom?

A. To the Standard Oil Company.

Q. Who says how much shall be charged on this sort of a transaction?

A. The Lubricating Department of the Waters-Pierce Oil Company.

Q. Don't you know that you charge your ordinary market prices where under ordinary instances and in most instances five per cent. is added for the Marine Department of the Standard Oil Company as their part of it?

A. That I don't know.

Q. Well, what is your information on that?

A. The Marine Department is a small branch of the

1097 business.

Q. Well, that is a department of the Standard Oil Company that has all these contracts, isn't it?

A. That is a department of itself.

Q. Whether for the Marine Department or any other department of the Standard Oil Company, you collect a certain price, whatever it may be, five or ten, or whatever it is, you know that there is a per cent. collected in addition to the market price, do you not?

A. I do not know that.

Q. What is your information about it?

A. I have none.

Q. You don't know what those charges are, what the basis of the charges are?

A. I know in a general way, yes, sir. The Marine Department of our business is a very small part of it.

Q. I am not talking of that.

A. The Lubricating Department is understood to handle it without supervision of any of the other departments. That is one of the few branches of business handled direct under the management of the Lubricating Department. He is, so far as I know, authorized to charge oil sold to steamers for account of the Standard Company his existing Prices for such oils at the point at which they are delivered. Beyond that I don't know.

Q. He is authorized by who to do that?

A. By myself.

Q. The Executive Committee during its existence, and the Advisory Board does not fix the price at which he shall furnish oils to the steamers?

A. No, it does not.

Q. Who is the Manager of the Lubricating Department?

A. Mr. Harris.

Q. How long has he been such manager?

1098 A. Several months. I think he was made Manager in the Fall of 1906.

Q. Mr. Stephen Johnson was the Manager before him?

A. Yes, sir.

Q. And was for many years?

A. For many years, twenty-eight years, I think, or thirty.

Q. You say you don't know just what arrangement there is, then, about charging for the benefit of the Standard Oil Company a commission or whatever it is in addition to that price, for their benefit?

A. I know of no arrangement dictated by the Standard Oil Company at which we charge lubricating prices for their benefit.

Q. I am not asking about lubricating prices.

A. Well, any prices.

Q. I am speaking especially with reference to the oils furnished vessels touching ports in Texas.

A. I know nothing, absolutely nothing, of any such arrangement.

Q. Do you know of the Central Coal & Coke Company, a corporation that runs a lot of saw mills down in East Texas?

A. I know of it, yes, sir.

Q. Don't you know that they have a contract with the Standard Oil Company, made with the Kansas City branch, the corporation being located at Kansas City?

A. Yes, sir.

Q. By which the Standard Oil Company is to furnish all the oils of certain kinds, especially lubricating oils, that they may desire in their business trade in Texas, and in the territory in Louisiana in which the Waters-Pierce Oil Company does business, wherever they have a saw mill or other plant that demands oils, that the Waters-Pierce Oil Company furnishes those oils to them and charges them against the Standard Oil Company?

A. You are speaking of a contract which the Standard Oil Company has at present with the Central Coal & Coke Company at Neome and Parsons, Louisiana?

1099 Q. Yes, sir.

A. I don't know of their having any such contract at present.

Q. Or recently?

A. They may have had one in the past.

Q. Didn't you furnish oils on requisitions of that sort and get paid from the Standard Oil Company for doing so?

A. We have done it.

Q. And what prices did you charge?

A. So far as I know, we have charged our regular prices that we would ordinarily charge for such oils, based upon the delivery.

Q. You didn't charge the contract prices, then, at which the Standard had agreed to sell them? To refresh your memory, isn't it a fact that you did furnish for the prices at which the Standard Oil Company had agreed or contracted to furnish those people for the different grades of oils which you yourself furnished them at those points?

A. I want to be entirely clear and answer your question directly. The Standard Oil Company when they desired us to make such deliveries as you speak of would inform us that they had a customer at such a point, naming it, at which point they desired to sell that customer certain oils, naming the oils, and they would tell us that the customer was willing to pay such and such prices, naming the

prices which presumably the customer had made with the Standard Oil Company under a blanket contract.

Q. You just assume that?

A. I have to, because I don't know. If the prices were agreeable to us we accepted them, and if not we replied to the Standard Company naming the prices at which we would supply those oils, and then if the Standard Company accepted the prices we supplied them on behalf of the Standard Company.

1100 Q. You charged them direct?

A. Yes, sir, but the Standard did not dictate the prices at which we would supply the oils.

Q. Now, this concern that I have been speaking of, have you any approximate knowledge of the business that was done with them in the territory, and what it is, in a general way?

A. No, we supply them at Neome and Parsons, Louisiana, and the business was the average business done by a plant of that kind.

Q. How about our saw mills in East Texas that operate along in what is known as Waters-Pierce Oil Company territory?

A. I think we supply them at one point in East Texas; I am not sure of that.

Q. In what is known as the Kansas City Southern?

A. Well, we may have supplied them, but I am not entirely sure of that.

Q. You don't remember the number of places in East Texas now?

A. I do not. No, I don't recall any name in East Texas. If there was an order from there we probably supplied it.

Q. What was the custom with reference to orders that were received by you from customers in what is known or what has been known as Standard Oil territory, if a personal customer would write to you for prices and you were not doing business in that territory?—what did you do with those orders?

A. We did one of two things. We either quoted the customer F. O. B. our St. Louis supply sheet, which was practically the only thing we could do if we were going to sell him, or we turned the order over to the Standard Company out of courtesy, because they operated in the territory and we did not.

Q. And they did the same thing on orders that went to them?

A. So far as I know. Occasionally they did not. Sometimes they shipped the oil requested by customers in the territory in which we operated direct to the customer, presumably the

1101 parties selling it, that would be our nearest supply point, the same as we did.

Q. Did you ever hear of their doing that in Texas?

A. I think I have.

Q. At what point?

A. I think at El Paso.

Q. Have you any way of refreshing your memory or giving any actual information about that?

A. I have, decidedly. Not here at present, but I have memoranda.

Q. That is what I mean.

A. Oh, yes.

Q. Will you try and get that information?
A. I will.
Q. Is your memory now distinct as to that? I don't care about the dates.
A. No, it is not.
Q. I wish you would ascertain that at adjourning time.
A. I will endeavor to do so.

(Redirect examination by Mr. JOHNSON:)

Q. Vessels touch there at Galveston which have contracts with the Standard Oil Company at New York for supplies of marine oils that a vessel requires from time to time?
A. They do.
Q. Now, do you know of any regular arrangement or understanding, or is there a regular arrangement and understanding between the Waters-Pierce Oil Company and the Standard Oil Company with respect to supplying vessels of that kind with oil at Galveston?
A. None that I know of.
Q. Is it done by special letter or request?
A. It is done in each case relating to any separate steamship line by special letter requesting us to supply certain steamers with
1102 marine oils at certain prices for account of the Standard Company at prices which we name for our marine oils. That is my knowledge.
Q. And the Waters-Pierce Oil Company sells its oil to the Standard Oil Company instead of to the steamships?
A. Exactly, and delivers them to the steamships.
Q. And makes its invoice or bill to the Standard Oil Company for the oils supplied?
A. That is correct, to the Standard Oil Company.
Q. And the Standard Oil Company pays the transportation for the oils thus supplied?
A. That is right.
Q. As to the prices, you say you don't know how those prices are fixed?
A. I know less clearly regarding the marine oil prices than any other detail of the business, as to prices.
Q. Now, how about sales of oils supplied like in the case mentioned of the Central Coal & Coke Company?
A. That is the sale of oils to the Standard Oil Company, that delivery to a customer in our territory who has a contract with the Standard Oil Company under which the Standard Oil Company desires to make such deliveries.
Q. The Standard Oil Company in a case of that kind would write to the Waters-Pierce Oil Company asking them to quote it its prices, the prices at which it would supply oils to a customer at a certain point, say in Missouri, of certain enumerated oils?
A. The exact procedure, I think, is for the Standard to write the Waters-Pierce Company today that they have a customer under contract or otherwise at a certain point, and wish to deliver certain oils, specifying them, to that customer, on their contract, if it is a contract and the customer requires delivery at specified prices, and is the

Waters-Pierce Oil Company willing to make delivery of those
1103 oils at those prices. If we are willing to deliver at those prices, we tell them so, and if not we tell the Standard Company at what prices we will deliver those oils, and the Standard Company either rejects or accepts the price. I would like to amend my first testimony to this extent. I recollect now, these letters do not pass through my hands unless I ask for them. If the Standard writes us saying that they have a customer at such a point under contract and would like us to quote prices and we quote in reply to the letter and they wish to get the prices that they can, and make us a proposition and we conclude to accept their price, we tell them so, and if not we tell them what prices we will accept, and it is a free proposition between the Standard and the Waters-Pierce Oil Company.

(At this point a recess was had until 2 P. M.)

(Examination by Mr. JOHNSON continued:)

Q. Have you the memoranda that you were to get before we adjourned?

A. You wanted to know the date that R. P. Tinsley was elected Vice President. That was April 28th, 1904. You also wanted to know the date that he resigned. That was June 22nd, 1905. You asked the date that Mr. A. M. Finlay was elected President. That was the 18th of February, 1904. He also served until June 22nd, 1905, as President.

Q. When were you made President, at that time?

A. Yes, sir.

Q. Do you remember as a matter of fact when it was that Mr. Tinsley came to the home office and assumed the duties of Vice President?

A. It was April, 1904.

Q. And when did he leave the home office entirely?

A. He left the home office very nearly the end of April, 1905; it was the last few days.

Q. And he left here for good, finally, before he tendered his resignation as Vice President of the company?

1104 A. Very nearly two months before he tendered his resignation.

Q. Mr. Pierce, from the time that you have been connected with the present Waters-Pierce Oil Company, in the different capacities which you mentioned, what has been Mr. H. C. Pierce's connection with the company?

A. He was President up to February, 1904, and since that date he has been Chairman of the Board of Directors.

Q. And what supervision or control has he exercised over the management of the business of the company while you have been connected with it?

A. Such matters as I have found advisable to refer to him for final decision, he has passed upon and advised me, and his decision in the matter has been final, and it was handled in accordance with his ideas entirely.

Q. That has been while you have been Vice President?
A. Yes, sir, while I have been Vice President.
Q. How was it before that?
A. The same procedure was followed by Mr. Andrew M. Finlay, as far as I recall, and in addition Mr. Pierce received copies of the minutes of the Executive Committee, and controlled the company through action taken there.

(Portion omitted.)

Q. You say after that date, and until Mr. Tinsley left here, you don't know how the prices were fixed?
A. I do not.
Q. During that time you yourself had no voice in the fixing of the prices?
A. None whatever.

(Portion omitted.)

Q. From the time the company was organized in 1900 down to the time that Mr. Tinsley came to St. Louis to take the
1105 position of Vice President, who was it that directed and carried out the general business policy of the company?
A. Mr. H. C. Pierce.
Q. Mr. H. C. Pierce?
A. Yes, sir.
Q. Through the officers of the company, of course?
A. Through the officers of the company.
Q. Who was it after Mr. Tinsley left here?
A. Mr. H. C. Pierce.
Q. During the time Mr. Tinsley was here as Vice President, Mr. Andrew M. Finlay was the President and executive head of the company?
A. Yes, sir.
Q. Mr. Andrew M. Finlay is a brother-in-law of H. C. Pierce, is he not?
A. Mrs. Pierce was his sister.
Q. Your mother was Andrew M. Finlay's sister?
A. My mother was Andrew M. Finlay's sister, yes, sir.
Q. Now, you speak of reports and information being given to the Standard Oil people, the Standard Oil Company of 26 Broadway, New York. Why were those reports—why was that information given, as you have understood it?
A. I have understood, without knowing, except through the testimony as it was presented through the Missouri case, that the Standard Oil Company owned about two-thirds of the stock of the Waters-Pierce Oil Company, and as such owner I have always understood that the Standard Oil Company had the right to ask for such statements as a two-thirds stockholder or a majority stockholder would be entitled to, and for that reason statements were sent to them at their request.
Q. Have you refreshed your memory in regard to the manner in which deliveries were made by the Waters-Pierce Oil Company for

marine oils, etc., on account of the Standard Oil Company,
1106 and also in connection with contracts similar to the one that existed between the Central Coal & Coke Company and the Standard Oil Company?

A. I have. I recalled this morning more or less indefinitely regarding the marine oil prices, because that was a detail merely of the business. In general they were fixed by the Lubricating Department upon instructions from myself. It was some time back and I don't specifically recall that. I have since looked that up. I find in December—December 6th, 1905, if I recollect correctly—I have a copy of a letter in my book which I wrote the Controller's Department, fixing the price of marine oils, which price ever since has been the price at which they have been billed.

Q. When was it you wrote that letter?

A. May I refer to the copy?

Q. Yes, to refresh your memory.

A. I think it was December 6th, 1905. (After reference to paper:) Yes, it was. That is correct.

Q. Who was the letter addressed to?

A. To the Controller at that time of the company.

(Portion omitted.)

Q. Now, go on and state, your memory being refreshed, just how the matter is handled, and has been handled, since you wrote that letter?

A. After I wrote that letter?

Q. Yes.

A. The Lubricating Department received requisitions from time to time from the Standard Oil Company's Marine Department, to deliver to certain vessels certain marine oils. This was only at Galveston; that is the only point at which we handled marine oils,—Galveston, Texas. They would state when the vessels would be lying at the port and the amount of oil that they would need. Those were vessels that the Standard Oil Company had contracts for the sale of marine oils to. We would make deliveries there through our Lubri-
cating Department of the oils requested, and bill those oils
1107 against the Standard Oil Company, at the prices which I have named in this letter, which I have subsequently adjusted from time to time, the Standard Oil Company paying us in accordance.

Q. Then the matter of the price at which you delivered those oils is fixed by agreement between you and the Standard Oil Company? That is, you supplied the oil to the Standard Oil Company?

A. Yes. But those prices are not fixed by the agreement. The agreement is that we will supply the oil at the prices which we adjust from time to time here.

Q. You have nothing to do, then, the Waters-Pierce Oil Company has nothing to do with the price that the Standard Oil Company charges the vessels?

A. Nothing whatever; we don't even know what price they are charging. That is a matter between the Standard Oil Company and the company that had this contract.

Q. You don't know anything about the terms of the contract as between the Standard Oil Company and the vessel owner?
A. Nothing at all.

(Recross-examination by Mr. ALLEN:)

Q. Did you investigate to find out whether you could learn anything definite about the El Paso matter?
A. I did, Mr. Allen. I was mistaken in that. I did not find any evidence of a delivery of oil to El Paso, such as was mentioned.
Q. Now, in stating that Mr. H. C. Pierce controlled the policy of the Waters-Pierce Oil Company during the time you have been connected with it, of course you mean all the time excepting during the time that Mr. Tinsley was assuming—assumed control?
A. I do.

At 12.45 P. M. Court adjourned until 2.30 P. M.

1108 Court opens at 2.30 P. M.

Mr. ALLEN: We next offer in evidence the cross-examination of Mr. ANDREW M. FINLAY.

(Cross-examination by Mr. ALLEN:)

Q. Mr. Finlay, from the time of the organization of the new company in May, 1900, up to April, 1904—or '5, was it?—that you were President?
A. Up to June, 1905.
Q. June, 1905. Mr. Tinsley came here in April, 1904, I believe?
A. I think that is about the time.
Q. And left the following April, was it, or May?
A. No, I think it was the last of May, or the first of June. I think it was probably the very last day of May, the last days of May.
Q. He resigned his office as Vice President in June, at the June meeting?
A. Yes. He left suddenly. I did not see him at all, after I got back from Europe.

"It is agreed, in connection with the testimony of this witness, the suit of the State of Missouri against the Waters-Pierce Oil Company was filed on the 29th of March, 1905."

Q. Now, to refresh your memory, you stated that you knew when Mr. Tinsley left St. Louis. Isn't it the fact that he left when you were away?
A. I was in the city when he left.
Q. Had you returned from Europe then?
A. I had. I was out at my house. I did not feel like coming down to the office at that time.
Q. And your impression is that it was the latter part of May that he left the city?
A. I think so.
Q. Do you know where he is now?
1109 A. I do not know where he is.
Q. Have you any information about it?

A. Not a bit.

Q. While you were President of the company, up to the time that Mr. Tinsley came here and undertook to run the company, what were your duties with reference to handling the requisitions for supplies of oil to be sold by the company? That is, if one of your Division Managers in Texas, for example, should make a requisition on the General Manager for certain supplies to be delivered at points in Texas, did you have anything to do with that?

A. Yes, the freights would play a part in that.

Q. I am not asking about that, but the order itself—would it come through your hands, through your department?

A. At that time?

Q. Yes.

A. I don't think it did at that time; I am not clear. It has changed from time to time. Sometimes it would come into Mr. Ackert's room. At present it is coming into my room now.

Q. I am asking about it originally. Who orders those supplies, and who did during this time?

A. They are placed by Mr. Adams' Department.

Q. They were during that time?

A. I think they were.

Q. Were they transmitted by your department to his department, or by Mr. Ackert's department to his department?

A. I think by Mr. Ackert's department.

Q. You did not handle them?

A. I don't think I did at the time.

Q. Do you know anything of your own personal knowledge of how they were placed?

A. I have never seen—well, I have seen the forms used in Mr. Adams' office.

1110 Q. I mean where they were sent to,—requisitions made by the division officers, the officers of this company. Suppose a Division Manager in Texas wanted a supply of oils for any part of Texas, to go to points in Texas,—he would make a requisition upon the General Manager, and that requisition would then be approved, would it not—or disapproved? And if it was approved, it went to Mr. Adams' department?

A. Yes, sir.

Q. Then Mr. Adams, what did he do with it?

A. He would have an order made out on the regular form of order, with the number.

Q. Where would he send the order?

A. If it was for oil to be shipped from St. Louis, it would go from his office to our works here.

Q. Suppose that it was from the Corsicana refinery, or the refinery at Whiting, Indiana, where would it go?

A. If it was from Whiting, Indiana, it would go to Mr. E. Bogardus.

Q. Where?

A. Chicago.

Q. If it was from Corsicana, a Corsicana refinery, wouldn't it go to the same place?

A. At that time?
Q. Yes, at that time?
A. Yes, sir.
Q. It would also go to E. Bogardus?
A. Yes, sir.
Q. Who determined—this is what I want to get at—who determined the points from which the shipments should be made—the Waters-Pierce Oil Company or the Standard Oil Company?
A. The Waters-Pierce Oil Company, by all means. Dependent on the cost of the oil and on the cost of the transportation.

Q. And you sent your orders in to Mr. Bogardus, and you
1111 designated where they should be shipped from?

A. We decided before the order was forwarded where it should be shipped.
Q. And instructed Mr. Bogardus whether you wanted them shipped from Whiting or Corsicana?
A. Corsicana, or from Beaumont.
Q. The Security Company?
A. No, sir, not the Security Company.
Q. You did not send orders to him for the Security?
A. No, sir.
Q. Where were they sent?
A. They were not in existence at that time.
Q. When did they come into existence? Were they not organized in 1901? Well, I want to get at it in a general way. After they were organized, and you began buying from them, did not requisitions also come to Mr. Bogardus?
A. No, sir.
Q. They were sent direct to the company—to New York?
A. They were sent—they always have been sent direct from here to our agent in Beaumont, or Sawyer, and he would in turn place it with the refinery.
Q. With the Security Company?
A. Yes, or the Gulf Company, or the Texas Company, whoever it was.
Q. Now, these orders—you purchased the great bulk of your supplies for Texas and elsewhere from the Standard Oil Company, or its interests, of course? That is, the Corsicana refinery, or the refinery at Whiting, or Sugar Creek or Neodesha, Kansas, or these places known as the Standard Oil Company's places?
A. That is correct, the bulk of them.

Q. You don't know whether the Gulf or Texas Company is
1112 operated by the Standard or not?

A. No, sir, I do not.
Q. Now, in placing these orders, did you get quotations from these different refineries or the Standard, in place of placing the order, or did they quote you the prices from time to time and you simply placed the orders then, based on those quotations?
A. They quote us the prices at which they will sell us the oils at the different refineries that we would place the orders with for shipment from, depending on the freight rates as to where we would tell

them to make the shipments from, or which refinery we would tell them to make it from.

Q. I understood you to say that Mr. Stephen Johnson was Manager of the Lubricating Department at one time?

A. Yes, sir.

Q. Is Mr. Horn in his department?

A. Yes, sir.

Q. This department that was formerly his?

A. Yes, sir.

Q. What are Mr. Horn's initials?

A. E. S., I think.

Q. Do you know his handwriting?

A. I think I do, yes, sir.

Q. That "'Lubricating Department"—in whose handwriting is that, in your opinion? That is Mr. Horn's writing, isn't it?

A. To me it looks like Ed. Horn's, yes.

Q. And this is his stamp upon that letter?

A. Yes, sir.

Q. Now, is that the character of quotation that you usually got from the Standard people, when they were quoting you the full list of prices—of course, I understand from time to time you got

1113 quotations for the small quantities, or rather the small number of grades of oils—two or three grades perhaps?

"Mr. JOHNSON: I want you to identify that paper that you have handed the witness, which he is testifying from now.

"Mr. ALLEN: Yes, I will."

Q. Do you know Mr. McNall's handwriting?

A. Yes, sir.

Q. You have received a great many letters from him?

A. Yes, sir.

Q. That is signed by Mr. McNall, isn't it?

A. Yes, sir.

Q. Now, attached to it is a list of a great number of kinds of different oils, and the prices quoted, is there not?

A. Yes, sir.

Q. Now, what I am getting at, is that the ordinary way they had of advising you of what the prices were, when they gave you a general price list, during the time Mr. McNall was Commercial Agent of the Waters-Pierce Oil Company? Those things were usually transmitted through you, were they not?

A. Not always. The prices that I referred to as receiving myself were on refined oils and gasolines, principally; these appertain to lubricating oils—and were taken up in the Lubricating Department, of the business.

Q. All that pertained to the lubricating oils usually came to you?

A. The refined and the gasoline came to me.

Q. Through Mr. McNall?

A. Not always through Mr. McNall.

Q. But they usually came to you either through Mr. McNall or direct from the refineries?

A. Yes, sir.

Q. And the lubricating oils and things of that sort went to
1114 Mr. Stephen Johnson?

A. Yes, sir.

Q. Who was head of that department?

A. The Manager of the Lubricating Department.

"Mr. JOHNSON: Won't you indicate that letter, so as to identify it?

"Mr. ALLEN: We offer in evidence the letter dated June 15th, 1904, addressed to Mr. S. Johnson, and signed by Mr. R. H. McNall. Also the list thereto attached, being the letter identified by the witness, and signed by Mr. McNall, marked by the Commissioner 'Plaintiff's Exhibit No. Z.'"

"Mr. JOHNSON: We object to the introduction of the three legal sized sheets attached to the letter, because there is nothing to indicate that they are a part of the letter or referred to in the letter."

Q. Now, Mr. Finlay, during the time that the Executive Committee of the Waters-Pierce Oil Company existed you were a member of that Committee, were you not?

A. Yes, sir.

Q. Did that Committee fix prices at which you would sell oils and other commodities in the State of Texas, or who did fix prices?

A. They were passed on by the General Manager's office, by myself. Recommendations made to the Committee.

Q. And then if approved by the Committee they were promulgated by the General Manager, were they not?

A. Yes, sir.

Q. Did you take part, either as General Manager or as President or as a member of the Executive Committee, in the consultations about the fixing of those prices?

A. When I was present.

Q. Well, you were President of the Company?

A. I say, when I was present in the meetings; I may not
1115 always have been in the meetings.

Q. You attended them pretty regular, didn't you?

A. Yes, when I was here I did.

Q. Upon what did you base your prices? What did you take into consideration in fixing prices?

A. The cost.

Q. The cost of what?

A. The cost of oils that might be under discussion, freight, and local conditions, cost of marketing, handling and everything that pertained to the cost of the oil before it is marketed.

Q. What do you mean by "local conditions"?

A. There are points where we may make delivery by tank wagon, we may make delivery by iron barrels, or by cans, and we may make delivery at the warehouse.

Q. Oh, of course, they are details. I mean in general. Isn't it a fact, Mr. Finlay, that in fixing your prices that the two prime factors in fixing prices for localities were, first, the cost of the products, and second, competition, whether or not you had competition at that point?

A. Not altogether? There may be jobbing centers.

Q. Well, that would be competition?

A. That is what I say.

Q. Those are the two prime factors. Of course, there are other conditions, local conditions that would enter into it, but the two prime factors in fixing prices, of course, would be the cost to you, including the freights and markets, and the original refinery costs, and whether or not you had competition at the points?

A. Just exactly as any competitor would fix his prices or any wholesale house in any line of business.

Q. Exactly, and that is the way that those things are fixed?

A. Yes, sir.

1116 Q. Those are the two prime factors that you take into consideration in fixing the prices?

A. The cost, competition and local conditions.

Q. Now, do you have any sort of supervision or control of the Lubricating Department as to what prices they shall sell oils?

A. The Lubricating Department handles its own business.

Q. You have nothing to do with the fixing of the prices in the Lubricating Department?

A. Not at that time. They fixed them in that Department.

Q. Isn't it the fact that very many of the oils and commodities that were sold by the Lubricating Department were fixed absolutely by the Standard Oil people in advance?

A. No, sir.

Q. That is not true?

A. That is not true.

Q. Didn't Mr. Silas H. Payne, who is at the head of the Lubricating Department of the Standard Oil Company, at No. 26 Broadway, fix absolutely the prices at which the Waters-Pierce Oil Company would sell all of their trade mark brands, what are known as the trade mark brands?

A. I am not posted as to that. I didn't know that Mr. Silas H. Payne had any correspondence with——

Q. Look at the left hand corner of the letter there, the Lubricating Department, and see what initials are up there in the left hand corner, very small letters?

A. I will have to get on my glasses for that. That is S. H. P. up there.

Q. Yes. Do you know anything about the methods or procedure by which Mr. McNall would get his information that he communicated to the Waters-Pierce Oil Company?

A. Nothing whatever.

1117 Q. Don't you know that it was the fact and that Mr. McNall has so testified, that he got information from the different Departments of the Standard Oil Company at No. 26 Broadway and that the letters written—he would write the letters upon the stationery of the Waters-Pierce Oil Company, and in the left hand corner would put or have put the initials of the persons from whom he got the information?

A. Only from what you are telling me now.

Q. You never investigated that to know anything about that?

A. No, sir.

Q. So what I am telling you now is news to you?

A. I don't know a thing about that except what you have told me here.

Q. Well, did you learn anything of that sort when you were President of the company?

A. No, sir.

Q. While McNall was Commercial Agent under you?

A. No, sir, these letters went direct to the Lubricating Department.

Q. Who employed McNall?

A. Mr. H. C. Pierce.

Q. Did you supervise or instruct him at all?

A. Mr. Pierce when he employed Mr. McNall told me to give McNall information that he asked for and to address him there as our Commercial Agent.

Q. Mr. Pierce instructed you as he has testified heretofore, as he did all the other heads of departments here, to give McNall, as the representative of the Standard Oil Company, any information or reports that he desired?

A. As the representative of the Standard Oil Company?

Q. Yes, that is what Mr. Pierce has testified.

A. He didn't say that to me.

"Mr. JOHNSON: I object to that question as assuming that that is the testimony.

1118 "Mr. ALLEN: I am only stating to him what Mr. Pierce has testified to.

"Mr. JOHNSON: It is not proper to predicate a question to this witness on what another witness may have testified to. You could ask the witness as to the specific facts, but not in a hypothetical way, and a way that the question is framed.

"Mr. ODELL: And in addition to that, he has stated that he was not present at the time that Mr. Pierce testified, and of his own knowledge he does not know what he testified to.

"Mr. ALLEN: Is that a fact?

"Mr. ODELL: Were you present when Mr. Pierce testified?"

A. I was not. I never heard one word of his testimony anywhere with reference to this case.

Q. Do you know anything about the purpose of having Mr. McNall appointed Commercial Agent?

A. Mr. McNall?

Q. Yes, Mr. McNall?

A. Mr. Pierce employed McNall, but I know nothing more than what I was told to do, by him, or by Mr. Johnson for Mr. Pierce, to address any correspondence with reference to the Waters-Pierce Oil Company to McNall, who had been appointed as Commercial Agent in New York.

Q. You were President of the company?

A. Yes, sir. Mr. Pierce was a very large stockholder.

Q. The Standard Oil Company owned twice as much stock as he did, didn't they, at that time?

A. If Standard Oil owned it at that time.
Q. Well, you don't know whether it did?
A. I don't know who owned the stock. The certificate book will show that.
Q. All that you know, then, about McNall's employment is what Mr. Pierce communicated to you?
1119 A. That is all.
Q. Were you ever there during the time of his employment?
A. Yes, sir.
Q. As a representative of the company?
A. Yes, sir.
Q. Did you see Mr. McNall?
A. I saw Mr. McNall.
Q. Did you discuss matters with him at that time?
A. Well, I have seen him principally when I was on my vacation going up to Maine, stopped there on my way back.
Q. He was in Mr. H. M. Tilford's office?
A. H. M. Tilford was formerly a director of the Waters-Pierce Oil Company—that is, the old company.
Q. And was at the time it went out of business in 1900?
A. I believe he was at that time. I know he was at one time.
Q. Mr. Tilford requested you on one or more occasions, did he not, to come to New York and talk over the business of the Waters-Pierce Oil Company with him and others at No. 26 Broadway after its organization in 1900?
A. I think Mr. Tilford asked me.
Q. How many times did you go in response to those requests?
A. I remember once passing through New York from Kennebuck Port, Maine, going down to New York and stopping on the way home.
Q. How many times do you remember of going in response to those requests that he made?
A. I don't recollect more than that one time, in answer to him.
Q. You were there at other times, dropped in incidentally?
A. Not very often.
Q. Now, what phases of the business did you discuss with Mr. Tilford?
A. My talk on that particular occasion was with Mr.
1120 McNall.
Q. Well, I understood you to say that McNall and Tilford were in the same room?
A. Tilford was in the same room, but I had but very little talk with McNall.
Q. Was he present at your conversation with McNall?
A. No, sir, he was in and out of the room. Matters pertaining to the business I took up with McNall. He had statements sent to him from this office that Mr. Pierce requested should be sent, anything that he asked for, and he would discuss with me different matters.
Q. What sort of statements?
A. Statements with reference to sales of oil in iron barrels, maybe

the question of where we would buy the iron barrels, whether in the East, or Detroit, or here in St. Louis. Those were matters of detail that would come up.

Q. Would you give any instructions to McNall about buying supplies for the Waters-Pierce Oil Company, as to where he would buy them, or where he should buy them?

A. Such orders as we placed with McNall we generally knew where we were going to get the supplies.

Q. Where would you know you were going to get them?

A. Mr. Adams would know.

Q. You said you would know?

A. I would know if anything pertaining to refined oil or gasoline, but very few of those orders were going to McNall.

Q. Where would you know that you were going to get them if you placed them with him?

A. From shipments we placed from him, for instance, from Galveston we would have a quotation quoting refined oil from the Eastern refinery f. o. b. at point of shipment, possibly at Galveston or Mexico.

Q. Don't you know that McNall did not buy any refined oils of any sort upon orders of that kind except from the Standard
1121 Oil Company or some of its interests? Didn't you know it at the time that these orders were placed with him, that it was bought from them?

A. Not necessarily, for I would not pass on all the bills.

Q. Well, the ones that you knew about. Of course, some of them would not go through your department.

A. There was very little of the refined oil or gasoline that was bought in that way.

Q. I don't care whether little or much. Didn't you know that all these orders that were placed, that they were going to be placed with the Standard Oil Company or its interests?

A. I did not know it if they were going to be, nor did I know that they were.

Q. Well, what did you mean by your statement that you know where they would be placed at the time you sent the orders?

A. Following up a quotation, if we had a quotation of a shipment from New York, that quotation would be from a certain interest or company. It would be maybe the Bayonne refinery. The bills never came to me. That would go into the other Department. I never would see them, but Mr. Adams would.

Q. I understand. The Bayonne refinery is a Standard Oil refinery in New Jersey, isn't it?

A. I believe so, I don't know except what I see in the papers.

Q. I don't want, Mr. Finlay, to be unfair with you or anything of that sort. All that I want is the facts, and of course, if you don't know, that is all right, and if you do know, say so, and we will get along very rapidly. The point is this: Can you give me a single instance of orders that were ever placed with McNall for refined oils of any kind that were not supplied by the Standard Oil Company or some of its allied companies?

A. I don't know its allied companies, therefore I couldn't answer the question.

1122 Q. What is your information about it?

A. I have no information on that.

Q. You have no information about any of its allied companies?

A. I don't know a thing about them only what I have seen in the papers and what I picked up from hearsay and from supposition; nobody has ever told me what companies the Standard control.

Q. And you made no inquiries about it?

A. I made no inquiries about it.

Q. Did you ever give any instructions to McNall about who he should buy from?

A. Mr. Adams' Department placed the orders with McNall.

Q. You placed no orders with him at all?

A. Not with Mr. McNall.

Q. Now, how long have you been connected with the Executive Department, the home office of the Waters-Pierce Oil Company?

"Mr. JOHNSON: You mean the present company?

"Mr. ALLEN: Both of them."

A. For 18 or 19 years; that is, in different positions.

Q. The old company ceased to do business in 1900, in May, didn't it, and a new company was organized in May, 1900, was it not?

A. Yes, sir.

Q. What position did you occupy with the old company for a period of a few years before its going out of business?

A. Only a few months.

Q. Well, for a few months?

A. I was President.

Q. Well, before that time?

A. I have been Vice President.

Q. How long?

A. Oh, ten or twelve years.

Q. Were you connected during all this time with the Sales

1123 Department or what Department?

A. The Traffic and Sales Department. There were others that I had something to say about.

Q. You were principally connected with those two departments?

A. Yes, sir.

Q. In your connection with the Traffic and Sales Departments did you become familiar with your representatives in different localities and the territory in which you were marketing oil and commodities that were being sold and manufactured for the Waters-Pierce Oil Company?

A. Not after 1900, only with the Managers. I ceased to cover the small stations after I was made Vice President.

Q. What were your duties as Vice President?

A. Traffic, general supervision of the business including the construction of equipment, and prices, fixing the prices, fixing the salaries of the employés, and others.

Q. Did you have anything to do with the supervision of agents, either in an advisory or actual capacity?

A. Not with agents. We never came in contact with agents.
Q. With the Division Managers?
A. We came in contact with the Division Managers, yes, sir.
Q. Do you know Mr. LeRoy Campbell of San Antonio?
A. Well, I met him.
Q. Do you know anything about a contract that was made with him by which his business was purchased at San Antonio?
A. I know of a contract made by a brother of mine, the same initials as mine, made for the company.
Q. It was made for the Waters-Pierce Oil Company?
A. Yes, sir.
Q. When was that contract made, about?
A. Why, I should judge about twelve or fifteen years ago.
Q. It was made by the old company?
1124 A. Yes, sir.
Q. After the organization of the new company how long did Mr. Campbell continue in the employ of the Waters-Pierce Oil Company at San Antonio?
A. After the new company?
Q. Yes, how long was he in the employ of it?
A. I can not recall unless I would refer back.
Q. Well, about how long?
A. I have no recollection.
Q. Do you know whether a day, or a year, or three years?
A. It may have been a year, or it may have been three years. I couldn't tell.
Q. Well, it was a considerable period of time?
A. I may be wrong as to when my brother first entered into an agreement of some sort with Mr. Campbell. It may not have been as long as 12 years; may not have been more than 10 years. I don't remember how long.

"Mr. JOHNSON: The contract was made in 1894 and Mr. Campbell was discharged by the new company in 1904."

A. Well, then, I didn't miss it very much.
Q. Mr. Campbell was conducting the oil business at San Antonio on a small scale, was he not?
A. My recollection of Mr. Campbell was that he was in the grain or commission business in connection with the retail oil business.
Q. Yes, retailing oil on a small scale?
A. That is as I recollect it.
Q. At San Antonio?
A. Yes, sir.
Q. The Waters-Pierce Oil Company bought him out, did they not, and put him on a salary or commission?
A. I think it was a salary.
1125 "Mr. JOHNSON: Which company?
"Mr. ALLEN: The old Waters-Pierce Company."

Q. That was in 1894?
A. In 1894.

Q. Six years before it went out of business?
A. Yes, sir.
Q. After the new company was organized it continued Mr. Campbell in its employ under that contract, did it not?
A. I believe so.
Q. And paid him his salary under that contract?
A. I believe so.
Q. Up until about 1904?
A. Yes, sir, at the time that he wanted to go out.
Q. Well, he was discharged, or quit, did he?
A. Well, I think it was mutual. It was a mutual agreement.
Q. Do you know Mr. Clem, at Dallas, the Eagle Refining Company?
A. Well, yes, sir, I knew him years ago.
Q. Do you know anything about the contract that was made with the Eagle Refining Company? I don't mean the details, but in a general way?
A. Mr. H. C. Pierce knows about that.
Q. Personally he made the contract?
A. I think he did.
Q. And you as connected with the executive department of the company, did you ever have anything to do with the carrying out of that contract to pay Mr. Clem a salary?
A. No, sir, I did not.
Q. You do know that for some years after the reorganization of this company——
A. He was the agent.
1126 Q. They continued to pay him a salary to operate the Eagle Refining Company?
A. I think as agent, yes, sir.
Q. The Eagle Refining Company ceased to do business in 1904, didn't it?
A. Yes, sir, as well as I remember.
Q. Mr. Clem ceased to be in the employ of the Waters-Pierce Oil Company about that time?
A. Yes, sir.
Q. The Eagle Refining Company was engaged in selling oils at Dallas, Texas, was it not, originally?
A. Well, Dallas and tributary territory. That was their headquarters.
Q. Do you know anything about its operations after it was purchased by the Waters-Pierce Oil Company as to how it was run or operated?
A. That was handled under—I think it was my brother.
Q. You know personally nothing about the handling of it?
A. No, sir, I have no knowledge of the details.
Q. Mr. Finlay, as a matter of fact when the old Waters-Pierce Oil Company ceased to do business in May, 1900, and the new company began to do business about the 31st of May, 1900, there was practically no change in the business, except in some officers of the company, was there, of the two concerns?

A. You mean their method of handling the business?

Q. Yes, and the employés, and the territory in which they operated?

A. I think the employés were all discharged, and——

Q. They were discharged by the old company, and in the same mail were employed by the new company?

A. That is a legal proposition that I have nothing to do with.

Q. You were the President. Didn't you write the letters?

A. Mr. Pierce and Mr. Johnson handled that.

1127 Q. But you were President of the old company at that time that it went out of existence?

A. I presume letters were sent out that way.

Q. Didn't you send letters under your signature discharging those employés, and don't you know that Pierce sent a letter at the same time employing them in the same capacity and for the same salary in the new company?

A. I think that is correct.

Q. Now, the territory continued to be the same in which business was done, did it not?

A. So far as I remember, yes, sir.

Q. Do you know or did you ever hear Mr. Pierce say what the territory was of the Waters-Pierce Oil Company for the handling and retailing of oil?

A. The wholesaling of oil?

Q. I mean the selling of oils, the commodities of the company?

A. When I first came to St. Louis I was superintendent of divisions, and there were statements which showed the towns in each division where they were doing business, and that is all that I had to guide me.

Q. Didn't you have a map in the office which showed the towns?

A. I don't know that.

Q. Did you ever see any map of that sort?

A. I have a recollection of seeing a map, but I couldn't remember the lines of the map.

Q. Oh, I don't ask you for the lines. Don't you know that there was a map?

A. There was one.

Q. They kept a map showing the divisions of the territory?

A. I think in Missouri division office there was.

Q. Everybody connected with the Waters-Pierce Oil Com-

1128 pany, that is, the manager's department, knew that the whole of Texas was in the Waters-Pierce territory, of course, and there was no necessity for having lines?

A. Yes, sir, that is a fact. I never saw any map with reference to Texas.

Q. Of course. This map was with reference to Missouri; and did you have one with reference to Louisiana, also?

A. I don't remember of ever seeing such a map.

Q. Well, it is a fact that you did not do business East of the Mississippi in Louisiana. It was only West of the Mississippi in Louisiana?

A. That is true, I think. We did do business away back beyond up to ten miles somewhere up along the river.

Q. Yes. Now, all of these territorial lines continued to be observed by the Waters-Pierce Oil Company after the new company was organized the same as the old one, did it not?

A. I don't know of any change.

Q. Well, of course you were connected with that company as its President and would have known if there had been any change?

A. I think I would have known it.

Q. You never agreed or instructed any change to me made?

A. No, sir.

(Portion omitted.)

Q. I believe that you stated that you had nothing to do with the practical workings of the lubricating department—that is, as to the filling of orders?

A. I have more now than I used to.

Q. I mean up to the time that Tinsley left?

A. No.

(Redirect examination by Mr. JOHNSON:)

1129 Q. Mr. Finlay, when Mr. McNall was first employed by the Waters-Pierce Oil Company he had his office at No. 26 Broadway, New York City, did he?

A. Yes, sir.

Q. Established his office there?

A. Yes, sir.

Q. All communications were addressed to him at that number?

A. Yes. sir.

Q. Do you know when the change was made from 26 Broadway to 75 New Street?

A. I don't recollect the date.

Q. In 1904, was it?

A. I think it was about that time.

Q. Did you or the company have anything to do with the change, or know anything about it?

A. No, except a request from Mr. McNall to address all mail to him in the future to 75 New Street.

Q. Don't you recollect, Mr. Finlay, when you received that letter from Mr. McNall, that you referred that to the General Counsel of the company, who advised against any such change being made?

A. I remember that.

Q. You advised Mr. McNall of the decision of the General Counsel of the company, did you not?

A. Yes, sir.

Q. Notwithstanding that, Mr. McNall insisted on having his mail addressed to that number?

A. Yes sir.

(Portion omitted.)

Q. Since you testified, Mr. Finlay, have you refreshed your memory as to the manner in which quotations or information was given

to the company from time to time as to the changes in prices,
1130 refinery prices, on refined oil and petroleum?

A. I was thinking over that last night. I recollect, of course, those quotations which I got out of the file this morning.

Q. You have read the letters over, have you, that you referred to?

A. I just glanced at them, to see that they were in the nature of what I was looking for,—quotations from the S. O. Company at Chicago, for the price of oils, and gasolines, to be delivered to us as we might call for them, at the different refineries specified in the quotations.

Q. Just state generally, now, who the quotations were received from, in a general way, and how they came?

A. They were—on refined oils and gasolines and naphtha, they were received by me from Mr. W. P. Cowen, who is Vice President of the Standard Oil Company in Chicago, and the Gulf Refining Company—I think that was addressed to Mr. Ackert, and the Security is addressed to me, I think. I don't recollect that exactly. You have it there.

Q. Well, speaking generally of the method in which quotations were made?

A. They were received in writing from the different parties.

Q. Announcing any change in the refinery or wholesale prices of oils sold to the company?

A. Yes, sir.

Q. And they were received from others besides the Standard Oil Company of Indiana or the Gulf Refining Company?

A. From the Texas Company at Beaumont, and the Security Oil Company, at Beaumont.

Q. Any others?

A. I have not looked for any others, because they only referred to——

Q. Do you recollect, now, any occasion that you received quotations from other companies, other than these?

1131 A. No, I received quotations from Mr. McNall, of the export New York prices.

Q. Those were export prices on crude oil?

A. Yes, and refined oils, too. We had very little to do with the cost of crude—very few shipments of that nature from New York.

Q. Those were refined oils?

A. Refined oils—gasoline.

Q. What were the shipments mostly from New York or Philadelphia, or any Eastern point? What were the shipments mostly? What was the character of the oil?

A. Crude oil, from Philadelphia, was the largest,—to Mexico.

(Recross-examination by Mr. ALLEN:)

Q. I also have here, Mr. Finlay, a telegram dated Chicago, 8-25-'06, addressed to you as V. P. of the Waters-Pierce Oil Company, at St. Louis, Missouri, and signed by W. P. Cowen, reading: "We can not make any reduction in the prices V. M. and P. Naphtha." Can you explain that?

A. That evidently was in answer to a request from me for a reduction on the prices.

Q. The price that they had quoted to you on those grades?

A. Yes, sir.

Q. Now, these purport to be original letters, as testified by you; they are original letters in your possession received by you in the regular course of mail?

A. Yes, sir.

Mr. ALLEN: In connection with this deposition we offer in evidence the letter as being written by McNall, has the initials "S. H. P." on the left hand corner, general price-list, and is stamped, "Received June 18, 1904. Answered E. S. H." It is addressed, "Mr.
1132 S. Johnson, St. Louis, Mo." The price list is also read in part, and all considered in evidence.

Judge STEDMAN: Was a copy of that attached to the letter you introduced before?

Mr. ALLEN: No. This letter was not introduced before. I am introducing it now. This is the letter that has just been proved up.

Judge STEDMAN: There is nothing there to make it appear that the list that you are reading was the list that accompanied McNall's letter.

Mr. ALLEN: Of course, it is only proved up in that way. I identified this letter by Mr. Horn as being received by him, and I identified then the list, all this memoranda on the list, as being made in his department.

Judge STEDMAN: Then we insist on our objection that there is nothing showing that that list is the schedule of prices referred to in McNall's letter.

Mr. ALLEN: In order to get at it at this time, because I want to introduce it, I will introduce that part of Mr. Horn's deposition in regard to it. It is on page 317 of this deposition.

(Portion of deposition of E. S. HORN:)

Q. I wish you would examine this letter and see if you have ever seen it before. That letter is dated New York, June 15, 1904, addressed to Mr. S. Johnson, St. Louis, Mo., and purports to be signed by R. H. McNall, and is marked "Plaintiff's Exhibit Z, cross examination of A. M. Finlay." Whose handwriting is that memoranda there, "Lubricating oil", in?

A. Mr. Coombs'.

Q. In your department?

A. He was at that time, yes, sir.

Q. Now, there is a stamp on it, "Received June 18, 1904.
1133 Answered E. S. H." Whose stamp is that?

A. That is mine.

Q. "E. S. H." are your initials?

A. Yes, sir.

Q. Do you remember that letter and that price list?

A. I do not recollect it.

Q. Examine the price list, especially the extreme left hand mar-

gin, the memoranda in red ink. Tell me in whose handwriting that is.

A. That is one of the clerks upstairs.

Q. In the office of the Waters-Pierce Oil Company?

A. Yes, sir.

Q. What does that indicate to your mind?

A. That indicates a change of price.

Q. That was checked by the clerk in your department?

A. Yes, sir.

Q. You have no independent recollection of that particular list?

A. No, sir.

Q. And the memoranda you recognize as being in the handwriting of one of the clerks in your department—that is, the department with which you are connected?

A. Yes, sir.

Q. And it indicates that the decline was checked. All declines are checked, are they not?

A. Yes, sir.

Q. That is true of all three of the sheets, is it not? I am speaking of the notations in red ink?

A. Yes, sir.

Q. (By Mr. JOHNSON:) When were those check-marks put on there? When were the prices reduced that those check-marks indicate?

A. I do not think there was any change in the selling
1134 price.

Q. You mean those check-marks indicate——

A. The selling price to the Waters-Pierce Oil Company, and this price here in the circular, the red ink price, is the difference between the former cost and what this made it.

Q. That is, it is a change in the price previous to the receipt of the circular that the company had been paying the refinery for those oils?

A. Yes, sir.

Mr. ALLEN: Now, that is the testimony that we offer in connection with the letter and the circular.

Judge STEDMAN: Now, we still insist on our objection, that there is not anything showing that the price list offered in evidence is the schedule referred to in the McNall letter. This witness says he does not remember it.

Mr. ALLEN: It does not make any difference whether it accompanied the McNall letter or not. We prove that up as having been a circular letter, as having been received by them and checked over by a clerk in the department to indicate the decline, and whether it is the identical letter spoken of there is immaterial. We prove that they received it and acted on it, and he testifies to that fact, and testifies to the handwriting on each page.

Judge STEDMAN: Further, there is nothing to indicate when that price list was issued.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

The COURT: What is the date of that letter?

Mr. ALLEN: The date of the letter is June 15th, and the price list is dated June 14th.

(Thereupon the letter and price list were introduced in evidence.)

1135 Mr. ALLEN: We now read Stephen Johnson's testimony, beginning with Direct Examination, page 268.

(Direct examination by Mr. JOHNSON:)

Q. What is your name?
A. Stephen Johnson?
Q. What is your age?
A. 71 years.
Q. What is your residence?
A. St. Louis, Missouri.
Q. What is your occupation?
A. I am out of business now.
Q. How long have you been out of business?
A. Since October last year.
Q. What was your employment up to that time?
A. I was Manager of the Lubricating Department of the Waters-Pierce Oil Company.
Q. You have been associated with Mr. H. C. Pierce a great many years in the oil business, have you not?
A. Yes, sir.
Q. You were with him prior to the organization of the first Waters-Pierce Oil Company in May, 1878?
A. Yes, sir.
Q. You became connected with that company when it was organized?
A. Yes, sir.
Q. And remained with it until it was dissolved?
A. Yes, sir.
Q. In what capacity? What position was it you held with the company?
A. In the first place I was city salesman.
Q. You took charge of the Lubricating Department?

1136 A. I took charge of the Lubricating Department very soon after the company was organized, I think.

Q. And continued as Manager of that department in the old company down to the time of its dissolution?
A. Yes, sir.
Q. When the new company was organized you took charge of the Lubricating Department as Manager of it?
A. Yes, sir.
Q. And continued in that position down to last October?
A. Yes, sir.
Q. By the Lubricating Department you mean the department which had charge of the sales of lubricating oils, as distinguished

from the refined oils and other products of the company that they dealt in?

A. Yes, sir.

Q. You knew of Mr. McNall and the connection that he had with the company?

A. Yes, sir.

Q. In the year 1904?

A. Yes, sir.

Q. You knew Silas H. Payne, too, didn't you?

A. I did, yes, sir.

Q. Do you know what company he was with during March, 1904?

A. Mr. Payne?

Q. Yes.

A. I suppose he was representing the Lubricating Department of the Standard Oil Company.

Q. I show you a copy of a letter dated March 24th, 1904, addressed to Mr. S. Johnson, signed R. H. McNall, the original of which is attested by Mr. F. H. Sanborn, Special Commissioner appointed to take depositions in this case, and is endorsed by Mr. Sanborn "Plaintiff's Exhibit No. 8, F. H. S.," the original letter being made an exhibit to the deposition of R. H. McNall taken in
1137 New York City. Read the copy of this letter through, and see whether you can recollect ever having received the original of that letter. (Paper handed to witness for inspection.)

"Mr. JOHNSON: Mr. Allen, have you the original of that letter here?

"Mr. ALLEN: No, sir. That is attached to Mr. McNall's deposition,—the original of that.

"Mr. JOHNSON: And that has been——

"Mr. ALLEN: That has been forwarded to Austin.

"Mr. JOHNSON: By the Commissioner?

"Mr. ALLEN: By the Commissioner, yes, sir.

"Mr. JOHNSON: With Mr. McNall's deposition?

"Mr. ALLEN: With Mr. McNall's deposition, yes, sir. Do you want to identify this as having been received by him?

"Mr. JOHNSON: Well, I asked him whether he could recollect having received such a letter."

A. I don't think I ever saw that letter.

Q. What makes you think so?

A. In March, 1904, I was absent from the city. I am very sure about that. I went to California, and I did not return to St. Louis until the 15th of April.

Q. You were absent during the entire month of March, 1904?

A. Yes, I left on the 14th or 15th of February of that year and was in California until I returned here on the 14th, I think, of April.

Q. At that time did you have an assistant in your department?

A. Yes, sir.

Q. Who was it?

A. Mr. E. S. Horn. I see that he has initialed the letter, also.

Q. Was he in charge of the Lubricating Department during your absence?

A. He looked after the correspondence and the prices.

Q. Well, did he attend—did he handle the inside business
1138 in connection with you?

A. Yes, sir.

Q. If a letter was received during your absence, it was opened and read by Mr. Horn?

A. Yes, sir.

Q. If any action was taken on it, it was taken by him?

A. Yes, sir.

(Cross-examination by Mr. ALLEN:)

Q. What relation are you to Mr. H. C. Pierce?

A. I am a brother-in-law. I married his sister.

Q. I will ask you to examine this letter, which is Plaintiff's Exhibit Z, to the cross examination of Mr. A. M. Finlay, marked F. H. S., being attached to the deposition of Mr. A. M. Finlay, taken before Special Commissioner F. H. Sanborn, and ask you to carefully examine that letter and also the price lists attached thereto, and call your particular attention to the memoranda in red ink on the left hand side of this price list, and also a memorandum on the face of the letter in pencil, "Lubricating Department", and I will ask you if you recognize whose handwriting either of those memoranda are in?

A. You mean just under the date here, where it says "Lubricating oil"?

Q. Yes.

A. I don't know whose handwriting that is.

Q. To refresh your memory, isn't that Mr. Horn's—Mr. E. S. Horn?

A. I don't know. I could not swear that that is his writing.

Q. All right. Now, you say that Mr. Horn was your assistant in the Lubricating Department, and looks after the mails, especially during your absence, and the prices and the things of that sort. What was the custom in the department about the date of this letter, when letters were received, as to whether or not they were stamped "Received" by anybody, or I will get you to tell me
1139 whether you recognize that stamp which is on there, "Received"?

A. I would recognize that as Mr. Horn's stamp.

Q. That was a stamp that was customary for him to put on mail that he handled?

A. Yes, sir.

(Portion omitted.)

Q. You don't know whose handwriting that is?

A. No, sir.

Q. Mr. Johnson, who furnished you the prices at which the lubricating oils should be sold? Who gave you those prices? Did you

personally fix the prices at which—or did some one else furnish them to you?

A. I almost always fixed them myself.

Q. Did you handle any lubricating oils of the Standard Oil Company which were known as trade mark brands?

A. Some.

Q. To what extent?

A. Well, quite a large extent.

Q. The Waters-Pierce Oil Company manufactures lubricating oils, does it not?

A. Yes, some kinds.

Q. Do you manufacture all grades, or just certain grades?

A. We manufacture certain grades.

Q. And you bought certain grades of the manufactured products of the Standard Oil Company?

A. Yes, sir.

Q. Now, those grades of the manufactured product that were furnished you by the Standard Oil Company for sale, or bought by you from them for sale, known as trade mark brands, isn't it the fact that invariably Mr. Silas H. Payne, who was at the head of the Lubricating Department, as you say, of the Standard Oil
1140 Company, gave you the prices at which those particular brands should be sold?

A. No, sir, I think not.

Q. Well, you say you think not. Don't you know that that was the fact—that he did that invariably. And that they came in the shape of letters, either from him direct or from Mr. McNall, Commercial Agent of the Waters-Pierce Oil Company at New York?

A. There may have been some of the trade mark brands that had minimum prices.

Q. Well, of course, they did not have maximum prices for them?

A. Minimum——

Q. Well, what prices?

A. Minimum cost price of the Waters-Pierce Oil Company, and we would not go below that, usually. Those were prices that we would name for the minimum even price, on that.

Q. The minimum even price would be named for certain particular brands, at times?

A. Yes, sir.

Q. And isn't it a fact, Mr. Johnson, that you invariably conformed to those prices, to avoid any friction with the Standard Oil Company, in having several prices?

A. Well, we did not conform to their prices unless it was consistent with our ideas of the profits that we could make on the oils.

Q. Oh, I do not mean invariably, but I am talking now about the special instances that you mention.

A. They might suggest prices, and if they were agreeable to our ideas we would adopt them.

Q. What do you mean by "agreeable"?

A. Depending upon the conditions and whether we were able to

hold the trade on their prices, or whether it would be necessary to go below those prices in order to get it; we would do that.

1141 Q. What do you mean by minimum prices that were fixed? Maximum prices were never quoted to you by them, were they?

A. No, sir, I think not.

Q. Only minimum prices?

A. It was the minimum cost price that we could get.

Q. What do you mean by the cost price?

A. What it would cost us, in buying from the Standard Oil Company.

Q. Well, you would know what the quotations would be. Did you make requisitions for those supplies yourself, or did some other department of the Waters-Pierce Oil Company make them?

A. The Lubricating Department made them always.

Q. Your department?

A. Yes, sir.

Q. Made them always?

A. Yes, sir.

Q. Now, that is the price, then, that was quoted to you—you say they quoted the minimum price, and not the maximum?

A. There was a price that they would not sell—those things were not sold below that. Sometimes they would also furnish prices on those goods; sometimes they would advance their cost price to us on those goods.

Q. But I am speaking about the selling price—the selling price that you should sell those trade mark brands at. In special instances didn't Mr. Payne write to you, either directly or through Mr. McNall, that in special instances the following should be the minimum selling prices, just like this letter, a copy of which was shown you by Colonel Johnson, appearing to be stamped by E. S. H., in which he quotes the minimum selling prices, but not the minimum cost price of certain kinds of oil,—isn't it a fact that that was frequently done by Mr. Payne, either directly or through Mr. McNall, as to these special grades of oil?

1142 (Objected to, as calling for the contents of written documents.)

A. That is, that he would write to us to suggest minimum prices?

Q. Minimum selling prices, yes, sir, as he did in the letter which you have just read that was shown you by Colonel Johnson?

A. I think he did. That letter would indicate that.

Q. That letter would indicate that?

A. Yes, sir.

Q. Now, you say, of course, as a general thing you promulgated the prices yourself from your department, without suggestions from them?

A. Yes, sir.

Q. That is, as to the bulk of the business?

A. Yes, sir.

Q. Now, upon what did you base the prices of the different lubri-

cating oil or other products sold by your department? That is, what did you take into consideration in fixing the price?

A. We would take the cost of the oil and the freight to the point where we would sell it, naturally, and a profit that was warranted, in order to compete with other dealers.

Q. Well, to make it plain, when you fixed a price yourself, were not the prime factors that you took into consideration the cost to you—that is, which included the freight and competition. Those two things controlled practically the fixing of prices?

A. The prices we made in different localities.

(Redirect examination by Mr. JOHNSON.)

Q. What are the trade mark brands of oil handled by the Waters-Pierce Oil Company—that is, the ones purchased from the Standard Oil Company?

A. There are a number of brands of cylinder oil and engine oil.

Q. Are they all products of the Galena Signal Oil Company?

A. No, No, they are goods that are supplied that bear the Standard Oil Company's brand and label; supposed to be trade mark brands, I suppose. Whether they were ever trade marked or
1143 not, I don't know. They were put out under the brand of the Standard Oil Company.

Q. And sold by the Waters-Pierce Oil Company under those brands?

A. Yes, sir.

Q. Did the Waters-Pierce Oil Company sell any lubricating oils under its own brands?

A. It did.

Q. The bulk of the lubricating oil handled and sold by the Waters-Pierce Oil Company were sold to the railroads, were they not?

A. A large proportion of them, yes, sir.

Q. What other trade did they sell lubricating oils to? What was called the smokestack trade?

A. The consuming trade—stationary engines, smokestack trade.

Q. Factory and mills?

A. Yes, sir.

Q. Establishments of that kind?

A. Yes, used in stationary engines, usually.

Q. Now, Mr. Johnson, you stated that you always fixed the prices at which you sold the lubricating oils to the general trade. Go on and explain what you mean by that.

A. That was fixed in the Lubricating Department; if it was not fixed by me, it was fixed by somebody who was representing me there.

Q. There was never any understanding or agreement as between you and your assistants and the Standard Oil Company at all regarding prices at which the Waters-Pierce Oil Company was to sell or did sell the lubricating oils?

A. No, sir.

Q. You never acted upon or accepted suggestions, as a finality, to

fix these prices, from suggestions made by Mr. Payne to Mr. McNall, or by Mr. McNall?

(Objected to as leading and suggestive.)

1144 Q. I mean you acted on your own judgment in regard to the fixing of prices, even though suggestions were made to you by Mr. Payne or Mr. McNall?

A. Well, if it was consistent, we acted upon their advice; where it was not, we used our own judgment in obtaining the business.

Q. What do you mean by "if it was consistent?"

A. If the Standard Company suggested it we might do it, but——

Q. If other conditions justified it?

A. That is it.

Q. Then, you were influenced by other conditions?

A. Yes, sir.

Q. It was determined by other conditions?

A. Yes.

Q. Competition and the price at which competitors were selling the same kind of oil?

A. Yes, sir.

(Objected to as leading and suggestive, and as being the testimony of counsel.)

Q. Well, state upon what basis you fixed the price of these trade mark brands of oil which you sold?

A. Well, we would take the cost of the oil to us here, and add the freight to it, and would make a price to the consumer, the party that we wanted to sell to—our customer.

Q. You would add the profit to be realized by the company to that? Would that have anything to do with fixing the price that the Waters-Pierce Oil Company would sell it?

A. We always undertook to get a profit over and above the cost laid down. That was not limited to any amount, because the competition came in, and we would sometimes sell below our regular price, because it was necessary on account of competition.

Q. Well, that entered into it, however—you figured that
1145 the company should realize a profit on those oils?

A. Certainly.

Q. The price at which the competitors were selling the same oils would enter into the determination of the selling price, did it not?

A. It did, yes, sir.

Q. Who determined that point, in fixing the price?

A. It was determined by the Waters-Pierce Oil Company, by the Lubricating Department.

Q. Always done that way, wasn't it?

A. Yes, sir.

Q. State whether or not it is a fact that finally you or the Lubricating Department determined the selling price of these trade mark brands of oil, taking into consideration the matters that you have mentioned?

A. I considered that we did.

Q. Is it not a fact that you did so?

A. Yes, I think so.

Q. That that was done?

A. Yes, that is a fact. The prices were actually made by us.

Q. The lubricating oils sold and supplied by the Waters-Pierce Oil Company to railroads were generally under contracts to the roads?

A. Always, almost, yes, sir.

Q. What different kinds of oils did you obtain from the Galena Signal Oil Works, or Galena Signal Oil Company—what is the style of the concern?

A. Galena Signal Oil Company. They sold oil, valve oil and oil known as——

Q. The question is, what supplies of oils did the Waters-Pierce Oil Company get from the Galena Signal Oil Company?

A. What brands?

Q. Yes.

1146 A. Perfection Valve Oil and Galena Engine Oil and Galena Car Oil and Perfection Signal Oil.

Q. Any others?

A. I think those were the only brands. There may have been others, but we never handled but very little of it anyway—there was Galena Coach Oil, but there never was but very little of that; that was one of their brands.

Q. Are any of those what you call or designate trade mark brands?

A. Yes, they were considered trade mark brands; whether they were trade marked or not, or patented, I don't know. They were supplied only by that company, under the brands, I think.

Q. Are any of the lubricating oils set out in the list attached to Mr. McNall's letter to you of June 15th, 1904, which is marked Plaintiff's Exhibit Z to the cross examination of A. M. Finlay, the Galena Signal Oil Company's oils you have mentioned?

A. I don't discover any of those oils on here.

Q. Are all the oils enumerated on that list so called trade mark oils?

A. In this list?

Q. Of the Standard Oil Company?

A. I don't think they are. They are oils named there—Mineral Seal, for instance, is an oil that I think is sold by other parties.

Q. How about the others? Look it through and see.

A. Those are all Standard Oil Company's brands.

Q. You mean by that trade mark brands—what you have designated as trade mark oils?

A. Yes, sir.

Q. (Mr. ALLEN:) You, during the time that you were connected with the Lubricating Department, had contracts and under those contracts furnished lubricating oils to most of the railroads in Texas, did you not?

A. Yes, sir, most of them.

1147 Q. And many other institutions and industries in Texas?

A. Yes, we shipped oils to Texas points to our different representatives, and they distributed them through there.

Thereupon Court adjourned until 9.30 A. M. Monday, May 27, 1907.

MONDAY, *May* 27, 1907.

Court opened at 9.30 A. M., and thereupon adjourned until 2.30 P. M.

Court opened at 2.30 P. M.

ROYER CAMPBELL, a witness for the Plaintiff, having been sworn by the Court, testified as follows:

Examination by Mr. LIGHTFOOT:

Q. Your name Royer Campbell?
A. Yes, sir.
Q. Where do you live, Mr. Campbell?
A. San Antonio.
Q. How long have you lived in San Antonio?
A. Nearly fourteen years.
Q. About fourteen years?
A. Yes, sir.
Q. What business are you now engaged in, Mr. Campbell?
A. At the present moment I am shipping the onion crop of the Texas growers.
Q. Shipping the onion crop for the Texas growers?
A. Yes, sir.
1148 Q. That is, do you buy the crop, or are you agent——

Mr. ODELL: Well we object to that, Your Honor. It is immaterial here whether he buys or under what arrangement.

The COURT: The objection is overruled.

Q. Just state what your business is, Mr. Campbell?
A. I am working for a corporation composed of the onion growers.
Q. Onion growers of——
A. Of South Texas.
Q. South Texas?
A. Yes, sir.
Q. Well, are you in any other business?
A. Yes, sir, I have a couple of farms that I—I don't do any work on the farms myself, but I farm them.
Q. You are running a couple of farms that you own?
A. Yes, sir.
Q. Now, how long have you been engaged in that business, Mr. Campbell?
A. About—oh, I could not say definitely; several years.
Q. How long have you been representing the onion growers?
A. Two years.
Q. Two years?
A. Yes, sir.
Q. Now, then, when you first came to San Antonio what year was it?
A. Fall of 1893.
Q. Fall of 1893. What business did you engage in after you came to San Antonio?
A. Coal oil.

Q. Coal oil business?
A. Yes, sir.
Q. Where?
A. San Antonio.
1149 Q. Coal oil business?
A. Yes, sir.
Q. Where?
A. San Antonio.
Q. What kind of business were you in—jobbing business or retail business?
A. Retail, in the beginning.
Q. In the beginning. Who did you sell to—merchants there?
A. No, sir, consumers.
Q. Sold to the consumers?
A. Exclusively.
Q. What was the name of the business that you established there?
A. Under the name of—it was an unincorporated company; under the name of the Texas Oil and Gasoline Company.
Q. Your business was called the Texas Oil and Gasoline Company?
A. Yes, sir.
Q. Who owned that business?
A. I did.
Q. You were the only member of the firm?
A. Not in the beginning, no, sir; about four months I had a partner, then I bought him out.
Q. You bought him out?
A. Yes, sir.
Q. Then you owned it exclusively?
A. Yes, sir.
Q. Now, what equipment did the Texas Oil and Gasoline Company have in the city of San Antonio at that time for the handling of oil?
A. Three tank wagons and the necessary tools and fixtures.
Q. Own any storage tanks?
A. Not in the beginning.
Q. Well, when did you establish your storage tanks?
1150 A. I think about the first of March, or I will say, in the Spring of 1904—I mean 1894.
Q. 1894?
A. Yes, sir.
Q. Well, now, then, after that time, after the Spring of 1894, and on up until, say, the first of October, 1894, what equipment did you have at that time for handling the oil business in San Antonio?
A. Well, I had the same equipment that I had up to March first, or about that time, and in addition to that I had two storage tanks of ten thousand gallons capacity each.
Q. Now, along about that time how much business were you doing in the city of San Antonio?—what was the volume of your business?
A. I think in September, 1904—1894—I did a business of nearly eight thousand gallons.
Q. For that month?

A. Yes, sir, during that month. I will say, to be safe, seven thousand.

Q. Now, did you have any competition from the Waters-Pierce Oil Company up to that time, Mr. Campbell?

A. Considerable.

Q. Well, just state now to the jury what competition you had up until the first of October, 1894, from the Waters-Pierce Oil Company?

A. Well, in the beginning I bought oil of the Waters-Pierce Oil Company, their tank station at San Antonio, and re-sold it to the consumers. I don't remember definitely whether I got an inside price or not—I don't believe I did at that time.

Q. Well, how long did you continue buying from the Waters-Pierce Oil Company?

A. Up to the time that my tank cars with their contents arrived in San Antonio.

Q. Well, when was that?

1151 A. On or about March first, 1894.

Q. On or about March first, 1894?

A. I might be mistaken several weeks.

Q. Well, just in the neighborhood?

A. I will say the Spring of '94.

Q. Well, then, up until the Spring of 1894, you think, you bought your supplies from the Waters-Pierce Oil Company and re-sold to the consumer?

A. Bought all my supplies up to that time, or up to the time of the arrival of my tanks, with the exception of two or three cars of oil that I brought in when I started in the oil business in San Antonio; I brought that oil in in barrels.

Q. Well, now, at the time you started in the oil business what price was the Waters-Pierce Oil Company obtaining for oils in San Antonio?

A. You mean right from the beginning?

Judge PENN: We object to that, Your Honor, as irrelevant and immaterial.

Mr. LIGHTFOOT: Well, he says he don't remember.

Q. Now, then, I will ask you at the time you received—you quit buying oil from the Waters-Pierce Oil Company what was the price that was being obtained for oil at that place?

Judge PENN: We object to that as irrelevant and immaterial.

The COURT: What is the purpose of the evidence?

Mr. LIGHTFOOT: The purpose of it, if Your Honor please, is to show that after he quit buying oil from the Waters-Pierce Oil Company and undertook to secure it from outside concerns, and did secure it that way, that they immediately cut the price about half in two and commenced to try to destroy his business there, and in a very strong way, and then we want to show that that warfare continued up until October first, 1894, and then the Waters-Pierce Oil Company, in order to get rid of this competition there, bought this concern

1152 out and entered into a contract, which we are going to introduce later—show that they had a monopoly of the business

as long as he was buying from them, but when he quit buying from them they started this warfare, and then in order to re-establish the monopoly they bought him out.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Q. Now, then, do you remember about what prices were being obtained for oil, Mr. Campbell, up to the time that you received your first shipments of oil from other concerns?

A. Yes, sir, within a cent or two.

Q. Well, just state it as nearly as you can.

A. I would say seventeen cents per gallon, wholesale.

Q. That's the prices that were being obtained there?

A. Yes, sir, I think I was paying seventeen cents; I might have been paying sixteen—not less than sixteen.

Q. To the Waters-Pierce Oil Company?

A. Yes, sir.

Q. Now, then, when did you receive—you say about the Spring of '94 you received your first shipment from other concerns?

A. Yes, sir.

Q. Well, where did you get that oil, do you remember?

A. Yes, sir; Independent Oil Company, or Works, Oil City, Pennsylvania.

Q. How much did you get from them, your first shipment?

A. About eighteen thousand gallons—no, about sixteen thousand.

Q. How did it come—in a tank car?

A. I bought two storage tanks in Alliance, Ohio, of ten thousand gallons capacity each, shipped them to Oil City on tank-cars, one tank on each car. I had those tanks half filled with gasoline and they were shipped to me as tank-cars. Along with these two
1153 tanks I had a regular tank-car shipped filled with coal oil. When they got to San Antonio I braced up the car and pumped the oil out of one tank into the other, and in that way saved the freight on the empty tanks.

Q. Now, how soon after the arrival of that oil did the Waters-Pierce Oil Company make any change in their price?

A. Next day—the same day.

Q. The same day that that oil arrived, what change did they make?

A. I think they dropped—the first drop was about from sixteen or seventeen to twelve, then it finally reached a level of eight to ten cents.

Q. Eight to ten cents per gallon?

A. Yes, sir.

Q. Now, did any competition or warfare continue between you and the Waters-Pierce Oil Company after that?

A. Very vigorous one for me.

Q. How long?

A. Until the first of October, 1894.

Q. Now, then, I will ask you what character of warfare and competition did the Waters-Pierce Oil Company carry on with you after that time—just state what they did.

Judge STEDMAN: May it please Your Honor, we object to that as irrelevant and immaterial and not tending to establish any issue in this case. We further object because it appears that the testimony sought to be elicited relates to transactions that transpired in the year 1894, anterior to the incorporation of the present Waters-Pierce Oil Company, and also prior to the enactment of the anti-trust act of 1899 and the act of 1903, under which this suit is being maintained.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Q. Now, just state to the jury, Mr. Campbell, what the
1154 Waters-Pierce Oil Company did during that time, from the time you received this independent oil until the first of October, 1894—what methods they pursued or employed?

A. Well, the most potent one was the reduction in the price.

Q. Well, did they carry on the competition?

A. Yes, they established what they called the Consumers' Oil Company and made Mr. Schunke—I think that's his name, anyway, he is a brother-in-law of Louis Fries, who was agent of the Waters-Pierce Oil Company at that time—manager of this company. They followed my wagons around town and solicited apparently the business that I was thriving on more vigorously than they did to get other business. They went so far as to solicit business at my own house, they didn't know where I lived, and tried to sell my wife oil, and told her how much superior it was and that I wouldn't last but a short time, anyway, and then the price——

Mr. ODELL: Now, were you present when they were telling your wife that?

A. No, sir.

Mr. ODELL: Then we object, as hearsay.

The COURT: The objection is sustained.

Q. Well, they followed your wagons around and solicited the trade that you had been supplying?

A. Yes, sir.

Q. Do you know whether or not they solicited business that the Waters-Pierce Oil Company was supplying?

A. I do not.

Q. Now, what prices did they fix in following you around to the customers that you had?

A. I can't remember those figures definitely, but I would say ten cents to consumers. At the same time the Waters-Pierce Oil
1155 Company was selling to dealers at eight, and if they were selling at ten cents at the time, the Consumers' Oil Company sold at twelve, or two cents a gallon more to consumers than the Waters-Pierce Oil Company were selling to the wholesale trade or jobbing trade.

Q. Now, what was the difference in the price which the Consumers' Oil Company was making and the price you were making?

A. About four cents a gallon. I never cut my price below fourteen cents to the consumer, and I think it was twelve or eleven cents

to the dealer. I commenced selling the dealers then, when the fight was on.

Q. You commenced selling the dealers also?

A. Yes, sir, I did, whoever I could induce to buy.

Q. Well, was it a well known fact, Mr. Campbell, in San Antonio at that time that you were engaged in warfare with the Waters-Pierce Oil Company and the Consumers' Oil Company?

Mr. ODELL: We object to that, because it calls for the opinion or conclusion of the witness, Your Honor, rather than the statement of a fact, and it is leading and suggestive.

Judge STEDMAN: We object to it, further, that it appears to be a matter of competition between Mr. Campbell and the Waters-Pierce Oil Company. He was cutting their price and they were cutting his price, which all the anti-trust laws even contemplate as perfectly legitimate. He retaliated by doing the same thing in reference to their customers, and it does not throw any light upon the issues in this case.

The COURT: That objection goes to the weight of the evidence, but the other objection is sustained.

Q. Now, Mr. Campbell, to what extent was this rivalry between your company and the Waters-Pierce Oil Company and the Consumers' Oil Company known in San Antonio, if you know?

Mr. ODELL: Any knowledge he gained, Your Honor, is
1156 hearsay as to us. He could not get it from any other source, and unless he imparted the knowledge he had to an agent of the company, we object to it for that reason.

The COURT: What is the question?

(The last question was read.)

The COURT: The objection is overruled.

Mr. ODELL: We except.

A. Well, that's a pretty hard question for me to answer. Of course, it was a very interesting proposition to me, and I don't know whether other people were interested in it to any great extent or not.

Q. Well, were you enabled to get any higher prices for your oil there?

A. Yes, sir.

Q. Well, why was that, if you know?

Mr. ODELL: Well, we object to that, Your Honor. It is hearsay as to the defendant and prejudicial to their rights, as to the private reason or information that he had that was unknown and undisclosed to the defendant in the case.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Mr. LIGHTFOOT: Read the question.

(The question was read.)

A. Well, I claimed at that time, and I think that I was right, that I was selling better oil than they were, and there was a natural tendency, I think——

The COURT: Do you expect to prove prejudice against the defendant?

Mr. LIGHTFOOT: Well, Your Honor, the purpose of the testimony is to show that at that time it was known that he was an independent oil dealer there and that the Waters-Pierce Oil Company was trying to crush him out in his business, and that a good many people patronized him and paid him these higher prices by reason of the fact that the Waters-Pierce Oil Company had enjoyed a monopoly prior to that time.

1157 The COURT: The objection will be sustained.

Q. Now, then, do you know who owned the Consumers' Oil Company, Mr. Campbell?

Mr. ODELL: Of your own knowledge?—if the Court will permit the preliminary question.

A. I would like to ask the Judge how far I can say that my own knowledge extended in that case.

Q. Did you ever have any conversation with Mr. Louis Fries, agent of the Waters-Pierce Oil Company, during the time—that time—with reference to the ownership of the Consumers' Oil Company?

A. Yes, I will say I did; we were friends.

Q. What position, now, did Mr. Fries occupy and hold at that time?

A. He was Local Manager at that time.

Q. Of what?

A. He was Local Manager in the '90's of the Waters-Pierce Oil Company.

Q. Well, was he Local Manager at the time you were talking to him?

A. Yes.

Q. At San Antonio, of the Waters-Pierce Oil Company?

A. I can't remember now definitely just when Mr. Fries was changed from Local Manager to Division Manager, but it was about that time.

Q. Well, was he at that time an agent and officer of the Waters-Pierce Oil Company?

A. He was either agent at San Antonio or the manager of the division.

Q. At the time you had the conversation with him?

A. Yes, sir.

Q. Well, now, just state what he said to you about the ownership of the Consumers' Oil Company?

Mr. ODELL: Now, we object to any statement the witness may make as to the conversation had with Louis Fries, whose relation with the company is shown by the testimony to be uncertain. If a local agent of the company, it is not shown that it was within

1158 the scope of his authority to represent the company or to bind the company by any statement that he might make. If either local agent of the company or division manager of the company, it is not shown that he was acting in such capacity or authority with reference to the company as to know the details of the com-

pany's business, or to be in a position to know the truth of the matters about which it is claimed that he spoke; and, in addition to that, we object to it, for the reason that it is remote—shown to be many years prior to the organization of the present company.

The COURT: The objection that the agency of Mr. Fries is not shown to be such that he could bind the company by his statement as to who owned it is sustained.

Q. Well, now, what are the facts, then——

Judge PENN: If the Court please, we ask the Court to exclude the statement that the witness made a little while ago to the effect that the Waters-Pierce Oil Company established the Consumers' Oil Company in San Antonio and ran it in opposition there. It now appears from his testimony that that was hearsay only with him.

Mr. LIGHTFOOT: Well, we would like to ask a few more questions concerning Mr. Fries.

The COURT: Very well. You may do so.

Q. Now, you say, Mr. Fries was the local agent of the Waters-Pierce Oil Company at San Antonio during that time or before that time?

A. Yes, sir.

Q. Well, now, what were his duties there as local agent?

A. I suppose to conduct the affairs of the business.

Mr. ODELL: Well, we object to it as a supposition and speculative.

Q. Did he conduct the affairs of the Waters-Pierce Oil Company there?

A. Yes, sir.

Q. Market its oil?

A. Yes, sir.

1159 Q. Well, was he in charge there, selling oil in San Antonio?

Mr. ODELL: Your Honor, we object to the question as leading—not desiring to be technical, however, or take up the time of the Court.

The COURT: The objection is sustained.

Q. Well, just state as nearly as you can, Mr. Campbell, about what you know Mr. Fries did in San Antonio as representative of the Waters-Pierce Oil Company, just as nearly as you can, everything that you know that he did there?

A. Well, he directed employés, managed the office, and everything in connection with the duties of a manager or local agent. I don't know just what his duties were.

Q. Well, under what circumstances, now, did he talk to you with reference to this Consumers' Oil Company?—how did it come up?

Mr. ODELL: Well, we object, Your Honor, to how the conversation came up between the witness here and the party named, Louis Fries, because it is clearly shown that the capacity in which Louis Fries was serving the company was that of local agent, having no reference to or connection with any official act for the company or

of the company, and can not bind the company in the absence of authority.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. Now, in what connection did it come up, Mr. Campbell, the conversation you had with him?

A. Mr. Fries desired to eliminate trouble for himself I was causing the Waters-Pierce Oil Company there at that time.

Q. You mean for himself how?

A. As manager or local agent.

Q. Did it refer to the company's business there?

A. Certainly.

Mr. ODELL: We object, because it is leading.

Q. Well, go ahead and state what he said to you in that conversation?

1160 Mr. ODELL: Well, we object to it because it is hearsay, and for the same reasons that have been heretofore urged, Your Honor.

Q. Well, did it occur in the course of a business transaction between you and Mr. Fries, or socially?

A. We had no business transactions at that time.

Q. Well, was it with reference to any business transaction?

Mr. ODELL: We object to it because it is leading. Your Honor, the witness is an intelligent witness.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. Now, just state, Mr. Campbell, how it came up—just go ahead and state the conversation between you and Mr. Fries.

A. Well,——

Judge PENN: If the Court please, we understand the Court has excluded the statement of Mr. Fries because it is not shown to be in the scope of his authority as agent of the Waters-Pierce Oil Company.

The COURT: I understand this is an effort to show his authority.

Judge PENN: Counsel has asked him to state what Mr. Fries said, and to that we renew our objection.

Judge STEDMAN: I will submit to Your Honor—of course, Your Honor is familiar with the rule—that agency can not be established by what a person says.

Mr. ODELL: I would like for the Stenographer to read the question to the Court.

(The last question was read.)

The COURT: Mr. Sheriff, retire the jury.

(The jury retired.)

The COURT: Now, Gentlemen, I would like to know what you expect to prove.

Mr. LIGHTFOOT: We want to show, if Your Honor please, that he had a conversation with Mr. Fries, local agent of the Waters-

1161 Pierce Oil Company, in which they discussed conditions between them there with reference to this competition, in which

Mr. Fries, agent of the Waters-Pierce Oil Company, told this witness that the Waters-Pierce Oil Company owned the Consumers' Oil Company and had established it there to take care of him—to try to break him down and run him out of business there. That's the object of the testimony, and that that condition continued up until October first, 1894, and these conversations led up to the buying out——

The COURT: The Court has already ruled that you could not show that unless you show a connection between Fries and the Waters-Pierce Oil Company that would make it admissible against the Waters-Pierce Oil Company.

Mr. LIGHTFOOT: We propose to show that it came up about the competition and finally resulted in the sale—negotiations started with Fries resulted in a sale to the Waters-Pierce Oil Company of his business, and that the negotiations started there at that time, and that it was during those negotiations that these facts developed, and that Fries took up the question with him and that it resulted in the sale to the Waters-Pierce Oil Company.

Mr. BRADY: Just one further question—there is one further proposition we expect to show by this witness: That at this very conversation he is asked about, with reference to the Waters-Pierce Oil Company business in San Antonio, in the course of that business and in pursuance of his duties Mr. Fries went to Mr. Campbell and stated to him that they were going to drive him out of business and put him out of business, and had this Consumers' Oil Company there for that purpose, and that this conversation arose after he had stated to him that they had this company for that purpose, to put him out of business and to drive out competition. Now, of course the conversation with him comes in very closely connected with the statement to him that it was in the course of his business. He came to
1162 Mr. Campbell and told him that this company was out in the field and that they were the owners of this company, and Mr. Campbell at that very time was—Mr. Fries at that time was engaged in marketing the Waters-Pierce Oil Company's oil in San Antonio in competition with Mr. Campbell, in charge as their local manager and agent at San Antonio, and that in pursuance of a design for the company's benefit and to get rid of competition which was bothering the company, in the course of that business, he goes to Mr. Campbell and tells him, "One of the agencies we have employed to put you out of business is the Consumers' Oil Company, and it's about time we were coming to terms," or something along that line. We want to show that from those negotiations they finally purchased Mr. Campbell's plant, and it was consummated through the agency of the Consumers' Oil Company, which Mr. Fries informed him was one of the agencies employed by the company to put him out of business. Now, we contend that that was certainly in the course of his business as agent of the Waters-Pierce Oil Company, and it seems to us it is as binding as would be a statement from the president of the company.

The COURT: Do you expect to show that the transfer of the property to the Waters-Pierce Oil Company was done through Fries?

Mr. BRADY: No, sir, the negotiations were, but that one of the

officers came down from St. Louis, Mr. Naudain, and made the formal transfer, but that Mr. Fries negotiated with him from time to time.

Mr. ODELL: Now, if you will hear us just a moment, Your Honor. The purpose for which these gentlemen say they propose to offer this testimony illustrates the vice of it. The gist and the substance of the testimony they now seek from this witness is that Louis Fries, who was at that time local agent of the Waters-Pierce Oil Company in San Antonio, made to him a statement that the Consumers' Oil Company was owned by the Standard—by the Waters-Pierce Oil Company. It is not pretended that Louis Fries was a director
1163 of the company—that he was anything more than a local agent of the company, the presumption that may be given to his duties as a local agent of the company being to sell and deliver the products of the company at San Antonio, a thousand miles away from the company's home office. Now, it is not shown in this case, even, as to whether or not Mr. Fries was an agent on commission and that he himself might have a pecuniary profit in the business which he was carrying on, and that he might have the greatest personal motive for making the statement to this witness, whether the statement be true or false. Therefore, they expect to prove here by the hearsay declaration of this local agent in San Antonio, who, so far as acting in the course of the company's business is concerned, had no more authority, no more right, and no more knowledge of the matters about which he talked than a driver for the company had. It would be on the same theory as one of the drivers of the wagons going about detailing hearsay and other information about his employer—a thing that he could not know anything about by reason of the scope of his employment—powers that he derived by virtue of his agency. Now, the admissibility of this testimony must, it seems to us, be tested by that rule—the scope and the powers of his agency to secure information—to bind the company by any statements that he made, and the only development from this testimony is that this man was merely the local agent, having no knowledge of what the officers of the company were doing—not claimed to have established this other oil company himself, the Consumers' Oil Company—not claimed to have organized it or been present or had any connection with it in the world—merely hearsay testimony, such as a railroad agent might make about the I. & G. N. railroad being owned by some other railroad in Chicago or San Francisco or New York—a general statement such as he might gather from the newspapers, and it would be on the same principle to undertake to bind his company, when he was merely the local agent of the
1164 concern, as to bind this company by the declarations of a local agent as to what company owned it, and on that ground, why, we object to it.

Mr. ALLEN: We make this suggestion, if Your Honor please: That this witness has already disclosed that Mr. Fries was in exclusive charge of the sale of oil in that territory. Now, whatever agencies were committed to his care for the purpose of marketing oil for the Waters-Pierce Oil Company, whether it was under the name of the Waters-Pierce Oil Company or Consumers' Oil Com-

pany or something else, certainly came within the scope of his authority. This witness testified he was local agent there and in exclusive charge of the sale of the Waters-Pierce Oil Company's oil, and certainly it is directly in line with the scope of his duties, and the further fact that his own brother-in-law was in charge of this particular concern that they called the Consumers' Oil Company—not a corporation, it is not developed that it was a corporation, but that it was one of the vehicles by which the Waters-Pierce Oil Company marketed oil.

The COURT: Being local agent of the Waters-Pierce Oil Company at San Antonio, it came, I presume, within the scope of his duties to meet and overcome competition. A declaration made while doing that, that he was doing it through the instrumentality of another company, would be a statement within the scope of his duties. The objection is overruled. Recall the jury, Mr. Sheriff.

Mr. ODELL: Well, we except, Your Honor.

(The jury returned.)

Q. Now, you say Mr. Fries was local agent—or was the agent of the Waters-Pierce Oil Company at San Antonio?

A. Yes, sir.

Q. State whether or not you ever had any conversation with him with respect to the Consumers' Oil Company?

A. Yes, sir.

1165 Q. Where was that conversation?

A. San Antonio.

Q. Whereabouts in San Antonio?

A. Oh, that's—I couldn't state.

Q. You could not state?

A. No, sir, I don't remember.

Q. Well, now, state what conversation you had with reference to the Consumers' Oil Company?

A. We had many conversations. We were bitter business enemies during the week, but on Sunday we would usually go fishing or hunting together. Mr. Fries was agent for the Waters-Pierce Oil Company and my personal friend——

Mr. ODELL: I wish you would talk a little louder, Mr. Campbell please, sir.

A. Yes, sir. While he never made definite propositions to me, he was constantly urging me to make them a proposition, to the company or to signify my willingness to accept one from them.

Q. What kind of proposition do you have reference to?

A. To sell out—to quit.

Q. To quit business—to sell out to him personally, or to whom?

A. To the company.

Q. What company?

A. The Waters-Pierce Oil Company. Mr. A. M. Finlay did the same thing.

Q. Who is Mr. A. M. Finlay?

A. At that time he was manager—I don't remember just his title, but he was manager of divisions, I think, in St. Louis.

Q. Of what?
A. Of the Waters-Pierce Oil Company.
Q. Now, I will get you to state whether or not Mr.—just state the conversation or any conversations that you may have had
1166 with Mr. Fries relating to the Consumers' Oil Company, and who owned it?

Mr. ODELL: We make the same objection, Your Honor.
The COURT: The objection is overruled.
Mr. ODELL: We except.

A. I can't recall the exact words that passed between Mr. Fries and myself, because there was hardly a day passed that we didn't discuss the situation.
Q. Well, just the substance of what was said about it.
A. Well, the substance of it was, I neither had the nerve nor the money to withstand the competition that I was going up against.
Q. Well, did he explain that competition?
A. Oh, yes, by word and by action he explained it.
Q. Well, now, how did he explain it?—what character of competition did he have reference to, Mr. Campbell?

Mr. ODELL: We object to that, because it calls for the conclusion of the witness, rather than what was said.
The COURT: The witness will have to state, either exactly or in substance, what was said.

Q. You don't have to state the exact words, Mr. Campbell, just state the substance of the conversation with reference to the Consumers' Oil Company.
A. All right, sir. Mr. Fries told me, not once, but repeatedly, that the Consumers' Oil Company would drive me out of business. Mr. A. M. Finlay told me the same thing—Mr. Arthur M. Finlay.
Q. You say he was manager of divisions at St. Louis?
A. Yes, sir, I think that was his title at that time.
Q. Did you ever make any terms with them?
A. Sir?
Q. Did you ever make them any proposition about your business?
A. Yes, sir.
Q. When did you make the proposition, and to whom?
1167 A. First to Mr. Fries, and he referred the matter to Arthur M. Finlay in Galveston by wire. Let me go back and correct my statement a moment ago. Arthur M. Finlay was not manager of divisions in St. Louis at that time, he was manager of a division with headquarters at Galveston.

Judge STEDMAN: Now, Your Honor, we object to the introduction in evidence of anything that Arthur M. Finlay may have said, in view of his circumscribed authority, as anything he may have said is not shown to be in the scope of his agency.
The COURT: The objection is sustained. You will disregard what this witness said that Arthur M. Finlay said, Gentlemen of the Jury.

Q. Well, did you sell our your business?
A. Yes, sir.

Q. Who did you sell it out to?
A. To the Waters-Pierce Oil Company.
Q. When did you sell it?
A. The contract was made and signed some time in September, 1894, and the transfer was made October first, 1894.
Q. Well, do you mean by "the contract" that the final contract was made then?
A. Yes, sir, a temporary arrangement was made between the Waters-Pierce Oil Company and myself some time in September, 1894.
Q. I will get you to look at that, Mr. Campbell (handing witness paper), and see if you recognize it?
A. Yes, sir.
Q. Is that your signature to that document?
A. Yes, sir.
Q. Now, state when that agreement there was entered into?
A. Some time in September, 1894; at least, a short while prior to October first; it may have been in August, but I think it was in September.
1168 Q. Now, then, you afterwards entered into a contract with the Waters-Pierce Oil Company, is that true?
A. Yes, sir.
Q. Now, I will get you to look at that document and see whether or not that is your signature (handing witness another paper)?
A. Yes, sir.
Q. Is that the original contract entered into between you and the Waters-Pierce Oil Company?
A. Yes, sir.
Q. On the first day of October, 1894?
A. Yes, sir.

Mr. LIGHTFOOT: Now, if Your Honor please, we offer these instruments in evidence.

Mr. ODELL: Let's see it. (Paper handed to Mr. Odell.) Now, do I understand that you offer both?

Mr. LIGHTFOOT: I am going to offer both.

Mr. ODELL: If the Court please, we object to both of these agreements—that is, to the paper styled "Synopsis of agreement between Mr. Roy Campbell, of the Texas Oil and Gasoline Company, San Antonio, Texas, and the Waters-Pierce Oil Company," and the contract of date October first, 1894, for the following reasons: Both the agreement and contract were entered into by a company not the defendant in this case, and entered into some six years before the organization of this company and the securing of a permit for it to do business in Texas, Wherefore these two instruments are immaterial and irrelevant and throw no light on any issue in this case and are remote as tending to throw any light on any legitimate issue in the case; and for the further reason that they were both entered into prior to the enactment of the anti-trust law of 1889 as well as of 1903—1899, and 1903; and for the further reason that at the time they were entered into they came within the law and were
1169 not in violation of either the law or good business morals at the time they were entered into, and are calculated to preju-

dice the rights of the defendant here, as being offered as a circumstance to show that they were in violation of the present laws that were enacted years after they were entered into.

Judge STEDMAN: One moment, Your Honor. We further object because there was no law in Texas inhibiting the buying of the plant of competitors and good will prior to the enactment of the anti-trust law of 1903, which was passed many years after the alleged execution of this agreement and contract; and further, because the preliminary agreement, called the "Synopsis", appears to have been merged in the written instrument called the contract of October first, 1894.

The COURT: Let's see the papers. (Papers handed to the Court.) What is your allegation with reference to this matter?

(Mr. Lightfoot inspects the petition.)

Mr. BRADY: While he is looking that up, we have undertaken to give the assurance to Your Honor before that we expect to show that this contract was carried out by the new company.

Mr. LIGHTFOOT: "That in pursuance and furtherance of the conspiracies hereinbefore alleged, and for the purpose of creating and maintaining a monopoly in the business of refining and selling of refined oils and all the products of petroleum, and for the purpose of destroying all competition between the Waters-Pierce Oil Company and all other persons, firms, and corporations doing business in the State of Texas in competition with said Waters-Pierce Oil Company, plaintiff says that the Waters-Pierce Oil Company hereinbefore referred to bought out competing businesses, doing business in the State of Texas in competition with said Waters-Pierce Oil Company, and did maintain at a number of points oil-selling concerns apparently in opposition to it, in this, to-wit: That the Waters-Pierce Oil Company for the purposes aforesaid in the year 1896 bought out
the business of the Texas Oil and Gasoline Company and of
1170 one Roy Campbell, doing business in the city of San Antonio
and elsewhere in the State of Texas, and entered into contracts and agreements with said Texas Oil and Gasoline Company and said Roy Campbell whereby said Texas Oil and Gasoline Company was thereafter operated under said name as a competing concern of the Waters-Pierce Oil Company, by the Waters-Pierce Oil Company, aforesaid; that it was so operated by said Waters-Pierce Oil Company until May 29th, 1900; that upon the reorganization and incorporation of the Waters-Pierce Oil Company, defendant, on May 29th, 1900, it acquired the said business of the Texas Oil and Gasoline Company and continued to operate it under that name, and for the purposes aforesaid, and from that time down until the present time, and in all things ratified and enforced said contracts and agreements and maintained them in full force and effect as aforesaid." I believe that is substantially the allegation.

The COURT: The objection will be overruled.

Judge STEDMAN: We except, Your Honor.

Mr. LIGHTFOOT: It is agreed that these originals be read in the record and the originals be returned to the defendant. I will introduce the synopsis of agreement. I will read it to you, Gentlemen. (Reads Synopsis of Agreement, as follows:)

Synopsis of Agreement between Mr. Roy Campbell of the Texas Oil and Gasoline Company, San Antonio, Texas, and the Waters-Pierce Oil Company:

The undersigned agrees to sell out his entire business, including storage tanks, oil and gasoline contained therein, or in cars on the track, barrels, cases and bulk, empty wood barrels, pipes and fixtures, three wagons, two teams of ponies, two double sets of harness, office furniture, and other articles used in connection with said business—to the Waters-Pierce Oil Company at cost, or invoice, prices.

The Waters-Pierce Oil Company agrees to pay cash, as soon
1171 as transfer is completed, for all of the above; and, in consideration thereof, and also a certain sum of money to be paid for the good-will of the Texas Oil & Gasoline Company, by the Waters-Pierce Oil Company, as agreed upon, I, the undersigned, agree to enter the employ of the Waters-Pierce Oil Company at a salary of $ Ninety per month and to continue the Texas Oil & Gasoline Company's business in San Antonio locally, as long as they think necessary, under their direction, and for their account.

Further, I agree not to re-enter the oil or gasoline business at any time in the future, without the consent of the Waters-Pierce Oil Company; it being understood that within six months I get a permanent position, as long as service is satisfactory, with the Waters-Pierce Oil Company at some point suitable to my health, for $125.00 per month.

After the transfer of my property to the Waters-Pierce Oil Company, all transactions of my business are to be accounted for to the Waters-Pierce Oil Company and the same to be owned exclusively by them, without reserve; they to assume all expenses of conducting same.

(Signed) R. CAMPBELL.

Mr. LIGHTFOOT: Now, I will ask the witness a question or two about this before I introduce it.

Q. Now, Mr. Campbell, you say that on October first you executed that contract with the Waters-Pierce Oil Company?

A. Yes, sir.

Q. I see section 2 there of that has some scratches or some marks over it. Will you please state by whom those scratches were made there or when that occurred, as nearly as you can recollect it?

A. Well, I have never seen this copy or this original or duplicate, whatever you might call it since I signed it until now; this
1172 contract was issued in duplicate.

Q. In duplicate?

A. Yes, sir and I have a copy with this paragraph 2.

Q. Well, was that scratched out when you signed it?

A. No, sir.

Q. Well, do you know when that was scratched out?

A. I could not tell the definite date, but——

Q. Well, as nearly as you can tell. Has anything ever happened to call it to your mind?

A. Yes, sir, it was some time after I had been—received notice from St. Louis that I had been discharged, that the Waters-Pierce

Oil Company had gone out of business, and in that mail or the next mail I received a circular advising me that my services would be continued at the same salary as before; it was some time after that.

Q. Well, what year was that in?

A. I think 1901.

Q. Now, then, do you know what time the old Waters-Pierce Oil Company dissolved?

A. No, sir, I could not tell you.

Q. You don't know the exact date?

A. No; if I had thought about that question being asked I could have told it.

Q. Well, anyhow, do you recall the circumstance, do you or not, of the old Waters-Pierce Oil Company going out of business?

A. Yes, sir, I remember it.

Q. Well, do you recall the circumstance of the new Waters-Pierce Oil Company being reorganized?

A. Yes, sir.

Q. Well, now, you say you received a letter there the same day or in the next mail. Who was that from?—from the new com-

1173 pany or the old company—the last company, or the old company?

A. The last letter was received from the new company.

Q. Telling you that you would be continued in the employ of this concern?

A. Yes, sir.

Q. At the same salary?

A. Yes, sir.

Q. All right, now. Now, measuring time by that event, was it before or afterwards that anything was eliminated from that contract?

A. After.

Q. Well, now, could you approximate how long after?

A. No, sir, I could not.

Q. Whether it was a month or six months or a year?

A. No, sir, I couldn't tell the time.

Q. Well, can you give any idea at all, whether it was the same day or week?

A. No, sir, it was not the same day. Some time elapsed. That letter was received by me from—letter referring to the scratching of this contract was written, I am sure, by Arthur M. Finlay, and if I am mistaken at all about the dates, which I am sure I was not—(interrupted).

Q. Well, now, what were the instructions you received in that letter?

A. To take my contract to Louis Fries, who would—oh, well, it amounts to scratching out one of the paragraphs, I guess.

Q. Well, is that the paragraph.

A. Yes, sir, that's the paragraph.

Q. Did you take your contract to him?

A. Yes, sir, we were together when that was erased in my copy.

Q. Well, now, was there any consideration paid to you for eliminating that, Mr. Campbell?

1174 A. No, sir.

Q. Did you pay them anything to be released from the obligation of that paragraph?

A. No, sir.

Q. They simply instructed you to do that, and you carried out their instructions?

A. Yes, sir.

Q. And that was after the reorganization.

(No answer.)

Mr. LIGHTFOOT: Now, we offer this contract in evidence, and it is agreed that it may be read in the record and the original returned to the defendant. (Reads contract, as follows:)

Mr. Royer Campbell's Agreement.

SAN ANTONIO, TEXAS, *Oct.* 1, 1894.

To the Waters-Pierce Oil Company, St. Louis, Mo.

1st. I, Royer Campbell, hereby agree and bind myself that in consideration of the Waters-Pierce Oil Company's paying to me the actual cost value, according to invoices, bills of sale, &c., in my possession, of merchandise on hand, also certain iron tanks and other appurtenances which I am now using at San Antonio, Texas, in connection with the petroleum and other business I am now engaged in, and the sum of one thousand dollars ($1,000.00) for the good will of my said business, I will sell and transfer all of my said business, merchandise, iron tanks, appurtenances &c., to the Waters-Pierce Oil Company at its convenience on or after this date.

2d. I Royer Campbell, agree and bind myself that during the term of fifteen years from this date I will not directly or indirectly transact any business in petroleum or other oils and goods handled by the Waters-Pierce Oil Co. in the States of Missouri, Arkansas, Louisiana West of the Mississippi River, and Texas, the Indian and Oklahoma Territories, and the Republic of Mexico.

(This paragraph erased by lines drawn through same.)

1175

3d. I, Royer Campbell, agree that if the Waters-Pierce Oil Company so desire, I will continue my present business at San Antonio or other points in the State of Texas, for its account and under its direction, until June 1, 1895, and as much longer as may be mutually agreed upon, and that I will accept as salary for my services in conducting the said business the sum of ninety dollars ($90.00) per month for a period of six months from October 1st, 1894, to March 31st, 1895, it being understood that my salary is to be one hundred & twenty-five dollars ($125.00) per month from the 1st day of April, 1895, and that I shall be located at some point suitable to my health and be given a permanent position so long as my service is satisfactory, and I further agree that if the Waters-Pierce Oil Co. desires me to do so before or after June 1, 1895, I will serve it in any capacity it may desire, provided such service would not be detrimental to

my health, at any point in the territories mentioned in Section 2d, and if for any reason I do not desire to do so the Waters-Pierce Oil Company shall not be obliged to continue me in its services.

(Signed) ROYER CAMPBELL.

Witness for the Waters-Pierce Oil Co.:
H. NAUDAIN.

(During the reading of the foregoing instrument the following objection was made by defendant's counsel:)

Mr. ODELL: Now, Mr. Lightfoot, are you reading the second paragraph?

1176 Mr. LIGHTFOOT: Yes, sir.

Mr. ODELL: If the Court please, we object to the reading of the second paragraph of the contract, for the reason that it is no part of the contract; it was mutually agreed, as testified to by the witness, that it should be erased and constitute no part of the contract, and having been erased, we insist that it is now no part of the contract and is inadmissible for any purpose.

(The document was handed to the Court for inspection.)

Mr. LIGHTFOOT: Now, before the Court rules on it, I would like to state that we expect to show by this witness also that there was no change in the business whatever; that it continued from that time on up until 1904. The witness has already testified that that was not eliminated until after 1900, and after this new company was reorganized, and that some little time afterwards—he is unable to locate the date—and we think that it would be admissible to show that up until that time that that part of the contract was carried out and observed as between the parties after the reorganization of the new company until he received a request from the defendant to have that eliminated from his contract.

The COURT: The objection is overruled.

Mr. ODELL: We except, Your Honor.

Q. Now, Mr. Campbell, what took place after you executed this contract?

A. The transfer was made and money was paid to me.

Q. The money called for in this contract was paid to you?

A. Yes, sir.

Q. Well, now, what did you transfer?

A. Everything I had.

Q. Everything you had, you transferred it to the Waters-Pierce Oil Company?

1177 A. Yes, sir, everything I had pertaining to the oil business—I didn't have much more.

Q. Well, did you continue business?

A. Yes, sir.

Q. Well, now, in what name was that business conducted?

A. Texas Oil and Gasoline Company.

Q. Texas Oil and Gasoline Company. Where did you get your supplies from that time, Mr. Campbell?

A. I made requisition on St. Louis for my supplies.

Q. Well, to whom at St. Louis?
A. I forget right now who was the manager at St. Louis at that time.
Q. Manager of who?
A. Waters-Pierce Oil Company.
Q. Well, do you state that you made your requisitions to the Waters-Pierce Oil Company?
A. Yes, sir—yes, sir.
Q. At St. Louis?
A. Yes, sir.
Q. Well, who sent the oils to you?
A. Evidently they did. We never received any oil in W. P. O. Co. Tanks.
Q. Well, now, in what kind of tanks did you receive it?
A. International Oil Works.
Q. Well, do you know what the International Oil Works was?
A. No, sir.
Q. Where were the goods shipped from—do you know where they were shipped from?
A. No, I don't recall that.
Q. Well, how long, now, did you receive it from the International Oil Works?
1178 A. Why, for several years. Then I commenced to get oil from—making the same kind of requisitions on the Waters-Pierce Oil Company in St. Louis, I would get oil from Corsicana.
Q. Get oil from Corsicana?
A. Yes, sir.
Q. Well, now, in what kind of tank-cars would you get oil from Corsicana?
A. Union tanks—Union Tank Line, I believe, it is called.
Q. Any other kind?
A. No, they never sent me any Waters-Pierce Oil Company tanks or any other kind—if they did, I don't remember it.
Q. Well, I will ask you whether or not during the time that you were running the Texas Oil and Gasoline Company whether or not there was ever a Waters-Pierce Oil Company tank-car filled with oil set on your side-track?
A. Yes, sir, there was once; I don't remember whether there was one or two.
Q. Well, what became of that?
A. It was pulled away—they never unloaded it.
Q. Well, what happened to it?—just state to the jury what happened to that tank?
A. We notified the Waters-Pierce Oil Company's office and it was immediately taken away.
Q. Well, had you ordered oil before that?
A. Yes, I had orders in all the time. I could not state specifically whether this car was set in on an order or not; I don't know.
Q. But it was set in on your track?
A. I do know that we didn't unload it.
Q. Why didn't you unload it?
A. Well,——

1179 Mr. ODELL: Well, we object to the reason he may have had, Your Honor, for not unloading it—unknown to the company.

The COURT: The objection is sustained.

Q. Well, did you have any instructions with reference to that matter, Mr. Campbell?

A. The matter of unloading that particular tank-car?

Q. No, any tank-car.

A. No, I was to unload tank cars that were set over there.

Q. Well, did you have any instructions with reference to that particular tank-car, then?

A. No.

Q. About unloading it?

A. No, no—it was pulled away as soon as I gave notice that there was a Waters-Pierce tank there.

Q. Now, then, Mr. Campbell, after 1900, after the company was reorganized, how did you run that business after that time?

A. The same as before.

Q. Was there any change in your business whatever by reason of the reorganization?

Mr. ODELL: We object to that, because it calls for the opinion and conclusion of the witness, Your Honor.

The COURT: The objection is overruled.

Mr. ODELL: We except.

A. No change.

Q. No change?

A. Oh, I believe—yes, I will say there was a change. We put up a little sign on our stable, "Waters-Pierce Oil Company."

Q. On your stable?

A. Yes, sir.

Q. Where was your stable situated?

1180 A. It was located out on the S. A. & A. P. railroad track, about nearly a mile from the center of town.

Q. Well, now, did you change the name of the company that was doing business?

A. No, sir.

Q. Did you have the name of the Texas Oil and Gasoline Company on your tank wagons?

A. Yes, sir, stationery and everything else.

Q. How was your stationery?

A. Texas Oil and Gasoline Company.

Q. Texas Oil and Gasoline Company. Well, did you continue to run business in that name afterwards?

A. Oh, yes.

Q. How long, now, did you continue to run it in that name?

A. I think until the first of March, 1904.

Q. Well, did you put any sign up on your office?

A. No, sir.

Mr. ODELL: We object to the question as being leading.

Mr. LIGHTFOOT: Well, I beg your pardon. I don't care to lead the witness.

Q. Now, Mr. Campbell, from 1894 up until the old company went out of existence in 1900, did you make reports to any one?
A. Oh, yes.
Q. Of your business? Who did you make them to?
A. J. P. Gruet, C. M. Adams, Arthur M. Finlay, occasionally A. M. Finlay, and the auditor at that time—I forget his name.
Q. Did you make any to Mr. C. P. Ackert?
A. Oh, yes.
Q. Well, now, what positions did those men hold, or what were their connections?
1181 A. Mr. Adams was treasurer.
Q. Of what?
A. Waters-Pierce Oil Company.
Q. Well, were all of these gentlemen that you named connected with the Waters-Pierce Oil Company?
A. Yes, sir.
Q. Where were their offices?
A. St. Louis, Missouri.
Q. St. Louis, Missouri?
A. Yes, sir.
Q. Now, then, how often did you make reports to the St. Louis office of the Waters-Pierce Oil Company?
A. Daily to J. P. Gruet.
Q. Daily to J. P. Gruet?
A. And wrote by letter, I will say frequently, maybe two or three times a month to A. M. Finlay, and later when he was succeeded by Mr. Ackert, C. P. Ackert.
Q. Well, did you make any reports outside of daily reports?
A. Yes, sir, I sent all trial balances at the end of each month and twice a month I sent in vouchers for expenditures and remitted to the Waters-Pierce Oil Company money that I had left on hand each month after the expenses were paid.
Q. Now, then, after the expenses were paid for running the business, all the money that you had on hand at the end of the month you reported that and sent it to the Waters-Pierce Oil Company?
A. In round figures, yes, sir; I never kept any surplus at San Antonio.
Q. Now, what were those reports about, Mr. Campbell?
A. Number of gallons of oil that were sold daily, oil and gasoline; generally those reports were to Mr. Gruet, the secretary, and a general report of the condition of the business and competition—
1182 a report such as any employé would render his superior.
Q. Now, then, about competition, what did the reports about competition include?
A. Well, for a while we didn't have any; of course, everything sailed easy then.
Q. You mean you didn't have any reports?
A. No, we always had reports, but no competition. When com-

petition would drop in I was supposed to line it up the best I could and make report——

Q. Now, what do you mean by "lining" it up?

A. Tell St. Louis all I knew about it, who they sold to and what they got—a general line of information for the St. Louis office.

Q. Well, state what you did, now, with reference to keeping track of any competition at that point?

A. Well, as an example, I remember at one time the Southern Pacific received a car of lubricating oil for distribution by one of the transfer companies in San Antonio. Mr. Fries called me up and told me there was a car of oil at the Sunset depot consigned to M. Cantu, and for me to investigate it. Well, neither of us knew M. Cantu. I went down to the depot and looked at it, and "M. Cantu" was "in car to" the Merchants' Transfer Company, and the man that was sent by Mr. Fries thought "in car to" meant "M. Cantu". I immediately put a man on a bicycle to trace the floats, and I reported to Mr. Fries how many cans and barrels and half barrels were delivered to the different people.

Q. Delivered to different people in San Antonio?

A. Yes, sir, some of them got away from us—we couldn't keep up.

Q. Well, the consignor too?

A. No, sir, we didn't know anything about the consignor—it was the consignee we were after.

Q. Well, what further action was taken with reference to
1183 matters of that kind?

A. I don't know; that was as far as I went.

Q. Well, did you take any steps to see the merchants or purchasers of oil?

A. No, sir, in that particular instance—I didn't handle lubricating oil at all. My duties were done when I made my report to Mr. Fries.

Q. Well, now, how about other oils that were delivered there?

A. Well, light oils, coal oil and gasoline, when we would find one of the fold straying away patronizing competition we would get after him. If he had some grievance against the Waters-Pierce Oil Company, I would go after him—it didn't make any difference which one of us got him.

Q. Why didn't it?

A. Well, we were all the Waters-Pierce Oil Company.

Q. Now, how long did the Consumers' Oil Company continue in busin ss after the Waters-Pierce Oil Company bought you out?

A. I could not say definitely, but not long.

Q. Well, about how long?—just estimate it as best you can.

A. Well, I will say four months.

Q. Well, do you know what became of its stock?

A. Yes, sir, it was taken—they didn't carry any stock; they only had wagons and horses and——

Q. Well, what became of its equipment?

A. That was all turned back to the Waters-Pierce Oil Company.

Q. And then you and the Waters-Pierce Oil Company conducted business there between you?
A. Yes, sir.
Q. Well, do you know from whom the Consumers' Oil Company got all its oils during the time it was in business?
A. Yes, sir.
Q. From whom?
1184 A. The Waters-Pierce Oil Company.
Q. Do you know whether or not it handled any of their other products?
A. Stoves only.
Q. Well, what do you mean by "stoves"?
A. Coal oil stoves.
Q. The Waters-Pierce Oil Company sold coal oil stoves?
A. Yes, sir.
Q. And the Consumers' Oil Company also handled them?
A. Yes, sir; I am not sure but they tackled gasoline stoves too at that time—it was anything to whip me.
Q. Now, how long, Mr. Campbell, did you continue that business there?
A. Until the first of March, I think it was, 1904.
Q. Was there ever any change in the business or the method of doing business from 1894 up until March first, 1904?

Mr. ODELL: We object to that, because it is leading and suggestive and calls for the opinion and conclusion of the witness.
The Cou[illegible]. The objection that it is leading is sustained.

Q. Well, what difference, now, if any, took place in the method of conducting business of the Texas Oil and Gasoline Company from 1894 up until March first, 1904?
A. None whatever.
Q. None whatever?
A. No, sir, none that I can recall now.
Q. Now, then, you say you made daily reports and semi-monthly reports and monthly reports to the Waters-Pierce Oil Company. What character of stationery did you use?
A. My daily reports—St. Louis had blanks printed headed, I think, either "R. Campbell Division" or "San Antonio"—it was "R. Campbell Division", I am sure. We used blank stationery for our monthly reports; we ruled them up ourselves; no blanks were ever sent to us.
1185 Q. Now, what character of envelopes did you send those in?
A. Blanks.
Q. Blank?
A. Yes, sir, always blank.
Q. Was there anything on the envelope to indicate from whom the letters were?
A. No, sir.
Q. Why was that?
A. On instructions from St. Louis.
Q. Well, what were those instructions?

A. To use blank envelopes.

Q. Well, was that the case at both ends?

A. Oh, yes, sir; yes, I recall no instance where I ever received an envelope with the Waters-Pierce Oil Company's name on it from St. Louis.

Q. Do you recall any instance where you ever sent them a letter with your name on it, or the Texas Oil and Gasoline Company?

A. No, sir, very careful about it.

Q. Now, what was the purpose of that, Mr. Campbell?

Mr. ODELL: We object to that, because it calls for a conclusion, Your Honor. It is not shown that it was known by the company. If he had instructions, it's the best evidence.

The COURT: Unless he had some instructions from St. Louis stating what the purpose was——

Mr. ALLEN: He has already testified that he had instructions, Your Honor.

The COURT: He testified that he was instructed from the St. Louis office to do this, but unless those instructions stated why it should be done he can not state it.

Q. Well, I will ask you whether or not you did receive any instructions as to why you should send your correspondence in blank envelopes?

1186 A. It was not necessary.

Q. You say it was not necessary?

A. Yes, sir.

Q. Now, then, Mr. Campbell, I will ask you if you had any competition or the Waters-Pierce Oil Company had any competition during the time that you ran the Texas Oil and Gasoline Company?

A. Oh, yes.

Q. Now, what character of competition did you have?

A. Well, we had a man by the name of Eckols, Sam G. Eckols, representing George Rice of Marietta, Ohio, some oil company, and later on John Locke of San Antonio put in a storage outfit—storage tank.

Q. Any other that you can recall?

A. Oh, in the territory and in San Antonio we were constantly being bothered by competition.

Q. Well, now, was there any competition after 1900?

A. Oh, yes, sir.

Q. Well, which competition was that?

A. Locke.

Q. Now, was there any before 1900?

A. Yes, sir.

Q. Well, what competition was that?

A. Well, that was George Rice of Marietta, Ohio.

Q. Well, now, what did you do, if anything, with reference to meeting that competition—the Texas Oil and Gasoline Company?

A. Called on the trade that was leaving the Waters-Pierce Oil Company and leaving—not buying from me; after I sold out, you know, and some time before, when I was in the oil business myself, I sold to the dealers as well as to the consumers.

Q. Yes.

A. And when a dealer would show an inclination to leave
1187 either one of us we would get after him; in some instances we paid rebates to hold the trade.

Q. In some instances you paid rebates to hold the trade?

A. Yes, sir.

Q. Well, what do you mean by "rebates"?

A. Well we collected the full price for coal oil when we delivered it, and at the end of the month we would turn—the man to whom we sold would turn in a voucher for a cent or whatever it would be per gallon, and send the voucher in to St. Louis for credit.

Q. Now, how long did that continue, that course of business?

A. That continued, I think, up until probably nineteen hundred—probably some time in 1903. I think all the rebates were cut out when I was discharged.

Q. You think they were all cut out when you were discharged?

A. Yes; I could have told definitely if I had thought about bringing an old book that I have in San Antonio, but I wasn't particularly interested——

Q. Well, it did continue up to that time?

A. Yes, sir.

Q. Well, how many instances of that kind can you recall?

A. Well, I recall one that lasted a long time.

Q. Which one was that?

A. C. Horan & Company.

Q. C. Horan & Company?

A. H-o-r-a-n, Horan & Company, yes, sir.

Q. Did you give him any rebates after the new company was organized?

A. Yes, sir, he got rebates after that.

Q. How often?

A. Every month. There would be an interim perhaps of a few months—prices of oil might get down to where we couldn't
1188 stand a rebate, and then we would cut it out.

Q. Now, state the course of business of the Texas Oil and Gasoline Company during the time you ran it with reference to the Waters-Pierce Oil Company?

A. I don't understand that question.

Q. The question is, state what was the course of dealing by the Texas Oil and Gasoline Company with reference to the settled trade of the Waters-Pierce Oil Company after you sold out?

A. Oh, well, we didn't look after their regular customers; we were to look after the disgruntled fellows.

Q. Well, did you solicit their regular customers.

A. No, sir.

Q. Did you undertake to sell them oil?

A. My men might have done that to make a showing, but not under my instructions; they were instructed to sell an average of so much a day, and they might have sold to some Waters-Pierce Oil Company customers in order to increase their sales.

Q. Well, do you know whether they did or not.

A. Yes, sir, I would say they did, but not much.

Q. Who got the benefit of that—what company?
A. The Texas Oil and Gasoline Company got the credit, but the money went to the Waters-Pierce Oil Company.
Q. Well, the Waters-Pierce Oil Company got the real benefit?
A. Yes, sir, they got the money.
Q. Now, you say your business was to look after the disgruntled trade. What do you mean by the "disgruntled trade"?
A. Anti-trust shouters.
Q. You mean people who were opposed to trading with the Waters-Pierce Oil Company, or the Texas Oil and Gasoline Company?
A. No, they thought I was all right. (Laughing.)
1189 Q. Well, why did they think that, do you know?

Mr. ODELL: We object to why they thought that, Your Honor, because it calls for his conclusion and opinion.
The COURT: The objection is sustained.

Q. What do you mean by that, Mr. Campbell?

Mr. ODELL: We object to that, because the objection has been sustained.
The COURT: The objection is sustained.

Q. Now, Mr. Campbell, I will ask you what the course of business was with reference to keeping track of competitive shipments to that point by the Texas Oil and Gasoline Company?
A. Well, monthly or every two weeks, or as often as I would gather information in regard to what the independent dealers were doing, I would furnish the information to Mr. Fries, who would compile statistics on it, and I gathered and got up my information as to outside business from spying on the railroads and gathering information in that way. Then each tank-car that came to town for competition would be noted. For instance, when Locke was getting oil, I had my instructions to my driver in that end of town to go by there every day and never miss a day and note whether there was any tank-cars, suspicious looking tanks, down there, and if there was a tank being pumped or one opposite his storage tanks, to take the number of it and report it to me, and I in turn turned it over to Mr. Fries, then Mr. Fries would figure how much—see for six months how much oil that Locke had received in that time. Then there were various methods of getting at how much he had on hand.
Q. Well, what were those?

Mr. ODELL: Well, we object to any further inquiry about the methods resorted to by the defendants to secure information with reference to competitive concerns, because it was no violation of the law for any legitimate concern to secure such information
1190 with reference to the business of their competitors. It is wholly immaterial and irrelevant in this inquiry and can serve no purpose but to prejudice the jury.
The COURT: What is the purpose of this evidence?
Mr. LIGHTFOOT: The purpose of it, if Your Honor please, is: Mr. Fries—we expect to show that these reports were constantly made to the St. Louis office. We have shown heretofore that these reports were made to the Standard Oil Company of New Jersey, and these

reports were interchanged, and it influenced business considerably in this territory, and the vigilance in keeping track of the competitive shipments, making him more energetic to wipe out competition and to establish this monopoly in the State of Texas by getting track of this testimony—I mean this information—and where the cars came from, they were enabled to pursue the objects of this concern here and to destroy business as far as possible. The information was used for a good many purposes in that way. It was for the purpose of keeping defendant advised and harassing competition that they had and destroying it.

The COURT: What provision of the anti-trust law does that violate?

Mr. LIGHTFOOT: Well, it would have effect, I think, in several provisions there. You take the rebates, now, that the witness has testified to. By keeping track of these shipments and of his customers and the general plan and manner in which they operated there it enabled them to finally secure business from those people, and by giving these rebates, in that connection, why, they were enabled to secure business of these merchants from the competitors of the Waters-Pierce Oil Company and the Texas Oil and Gasoline Company, and we think that that character and that method of business is an agreement on the part of this concern in violation of several sections of the anti-trust law, to-wit, it would have the effect of lessening competition, of enabling them to fix prices, and in fact to destroy competition—absolutely destroying it between them.

1191 The COURT: Agreement between whom?

Mr. LIGHTFOOT: Between the Texas Oil and Gasoline Company. The question I asked was what he did with this information that he got in that way, and he says he reported it to Mr. Fries. Now, I want to show that Mr. Fries compiled these statistics and that his standing with the Waters-Pierce Oil Company was predicated largely upon his ability to destroy competition there—the vigilance that he exerted in keeping track of competitive oils was for that purpose—and also that by getting all this information they were enabled absolutely to keep track of all the competition that existed at that point, and by a system of rebates and other things destroy the business of their competitors at that point and complete the monopoly which we have alleged that that method of trading that concern brought about.

The COURT: The objection is overruled.

Mr. ODELL: We except to the ruling of the Court.

Q. Now, read that last question.

(The Stenographer read the last question, together with the latter portion of the answer preceding it.)

Q. Now, what were those various methods that you had of securing this information.

A. Well, covering a period of six months, we would keep track of the number of tank-cars unloaded by the competition, and then we would measure what they had in their tanks.

Q. Well, how would you do that?

A. Well, we could tell the way they sweat—certain kind of

weather they will sweat. We knew how much they held, and we could by measurement—we knew what they would originally hold if they were full, you know, and then we could tell within a few hundred gallons of how much they held by the sweat or the leaks.

1192 Q. Well, then, what did you do with that information?

A. Oh, that was all given to Mr. Fries, and he compiled it himself. I didn't furnish it all.

Q. Now, what did he do with the statistics that he compiled there?

A. I don't know.

Q. You don't have any information as to what he did with it?

A. He never told me what he did with it.

Q. Well, did you ever make any reports to the Waters-Pierce Oil Company at St. Louis or any of its officers?

A. Oh, I never turned in any statistics. My business was to turn those in to Mr. Fries. I made suggestions with reference to the raising or lowering of prices. If I saw we could put prices up, I would suggest it. I was more often suggesting putting them down, though, because it was easier to sell oil.

Q. Well, now, Mr. Campbell, I will get you to state what the price of oil was after you sold out to the Waters-Pierce Oil Company?—did it advance or go down after that?

A. Oh, it did both. I remember—it must have been in '95, maybe in the early part of '96, we had the wholesale price of oil up to twenty-two cents a gallon and gasoline was twenty-five, something like that—wouldn't miss it a cent or two cents; that was for bulk oil—no container.

Q. Now, what was it just before you sold out to them?

A. They sold at eight cents. Mine cost me six and three-quarters.

Q. Now, immediately after you sold out to them was there any change?—if so, what was it?

A. Oh, not immediately; I won't say next day, but soon there was.

Q. Well, about how long?—just estimate it as nearly as you can.

A. Well, I can remember it somewhat from the roars I had from my customers. It was, I will say, within a month.

1193 Q. Well, now, what change was made, if any?

A. Why, an advance.

Q. Well, do you remember how much?

A. No, not definitely.

Q. Well, approximate it?

A. Oh, perhaps the first advance was two cents.

Q. Well, what was the next one?

A. It kept on stairstepping it up; I don't remember just what the advances were.

Q. Now, in 1896 it reached what point, you say?

A. Well, the highest point I remember of ever selling oil, I think, was in 1896. It was twenty-two cents for oil and twenty-four for gasoline, or twenty for oil and twenty-two for gasoline.

Q. Now, was there any competition between the Texas Oil and Gasoline Company and the Waters-Pierce Oil Company after you sold out?

A. No, sir.

Q. Did it go down after that?

A. Yes, sir.

Q. How came it to go down?

A. Competition, of course—or perhaps the inclination of the Waters-Pierce Oil Company to sell it cheap.

Q. Well, now, after 1900, and before Mr. Locke put in his plant there, do you have any recollection, independent recollection, of what prices you were getting then?

A. No, sir, nothing more than I have stated. I don't remember even what year Mr. Locke came in, and I don't remember when he went out.

Q. Well, now, I will ask you what regulated the prices, Mr. Campbell, of the Texas Oil and Gasoline Company and the Waters-Pierce Oil Company at San Antonio?

A. Instructions from St. Louis. Mr. Fries never gave me
1194 instructions at what price to sell, except in one or two instances, and I don't remember the circumstances in those two cases. We always got our instructions from St. Louis. I was not under Mr. Fries, understand; I was entirely independent of Mr. Fries, and I was instructed in the beginning not to go to the Waters-Pierce Oil Company office, but Fries and I being good friends, I used to go anyhow.

Q. Why were you instructed not to go in there?

A. I don't know.

Mr. ODELL: I object to that, Your Honor, as calling for the conclusion of the witness.

The COURT: Well, he says he don't know.

Q. Well, go ahead, Mr. Campbell.

A. I am through.

Q. Now, what was the difference, Mr. Campbell, in your prices and the Waters-Pierce Oil Company's prices to the trade after they took you over?

A. Well, most of the time we were the same. Some of the time I was lower, a little lower.

Q. What caused that?

Mr. ODELL: Well, we object to that, because it calls for his conclusion, Your Honor.

Q. If you know?

Mr. ODELL: And we ask that he be required to state the facts.

The COURT: The objection is overruled.

Mr. ODELL: We except.

A. There were certain disgruntled fellows in the trade at San Antonio that we had to take care of—chronic kickers.

Q. Now, you stated you made reports there. You say your instructions with reference to prices were received from St. Louis also?

A. Yes, sir.

1195 Q. Now, what would you do when you thought it necessary to reduce prices or to increase them?

A. Oh, I had all my correspondence with St. Louis, and Fries and I would talk it over.

Q. Well, would you make request of them for authority to reduce the price or advance it?

Mr. ODELL: We object as leading, Your Honor.

The COURT: The objection is sustained.

Q. Well, now, what did you do with reference to that, Mr. Campbell, when you wanted to make a change in the price?

A. I was constantly giving information and offering suggestions to St. Louis, and if the business was not going properly and we were not keeping up our—selling our full quota of oil at the usual prices——

Q. Now, upon what would you base your reductions?

A. Well, sometimes they were due to natural causes; hot weather in the Summer, long Summers, would reduce sales of oil; electric light company got after us and put in cheap electric heating apparatus that reduced prices, reduced the quantity sold, and also the groceries would get to cutting prices; they would sell oil, for instance, for five cents a can or one cent a gallon profit in order to make a leader of it, and it would raise Cain with our business—reduced my gallonage down to a point where the expense account and profit were about equal as far as I could tell.

Q. Well, now, from where did you receive all your instructions and from whom as to the changes you made in your prices?

A. Always the manager.

Q. Manager of who?

A. In the beginning it was Arthur Finlay at Galveston. Soon after I sold out, Arthur Finlay was removed to St. Louis and made manager of divisions, I believe, and I continued to report to
1196 Arthur Finlay until Mr. Charles P. Ackert was appointed or elected his successor, and up to the time I was discharged I reported to Mr. Ackert in such matters.

Q. Now, I will ask you what company all these gentlemen you have mentioned were connected with?

A. The Waters-Pierce Oil Company.

Q. Now, you say you ran on until March 31st, 1904?

A. March first or 31st.

Q. Well, how came you to quit?

A. They stopped my pay.

Q. Well, what became of the Texas Oil and Gasoline Company?

A. It was turned over to the Waters-Pierce Oil Company, lock, stock and barrel.

Q. Well, did it continue to operate if after that time?

A. No, sir.

Q. Well, what became of it, then?

A. It went out of business; I collected up the debts and sent them to St. Louis and it was wound up.

Q. Wound up. Now, how far was your office from the Waters-Pierce Oil Company's office in San Antonio?

A. Prior to the establishing of division headquarters in San Antonio, it was—oh, I would say three quarters of a mile.

Q. Now, at the time your business was taken over?

A. The same distance, but in the interim——

Q. Now, what equipment did you have after 1900?
A. Same as I had before.
Q. Yes, but I would like for you to state it.
A. I had just two tank wagons; we had strong competition, I forget who made it, I think it was Locke, and they had taken one of my tank wagons away, I turned it back to the Waters-Pierce Oil Company, one of the original three I had, I was only running two, and competition got pretty stiff and they sent me one from some place, and put that on and ran three tanks, and I turned all that stuff back to the Waters-Pierce Oil Company when——
1197
Q. How many drivers did you have employed?
A. Two at times and three at others.
Q. How many men did you keep employed in your office?
A. None constantly; I had a man to keep books at night, for which I paid him a nominal salary.
Q. Now, did you pay any taxes on the property there?
A. Yes, sir.
Q. Before 1900 and after 1900?
A. Yes, sir.
Q. Now, in whose name were the taxes paid?
A. I would have to refer to the tax receipts; I don't know whether it was Royer Campbell or the Texas Oil and Gasoline Company, but I think the Texas Oil and Gasoline Company.
Q. Well, was the Waters-Pierce Oil Company's name disclosed in any way in connection with those taxes?
A. No, sir.
Q. And that continued after 1900 the same as before 1900?
A. Yes, sir.

Mr. LIGHTFOOT: I believe that's all.

Cross-examination.

By Mr. ODELL:

Q. How long had you been in the oil business up to 1894, Mr. Campbell?
A. Just a few months—October, I think, '93.
Q. You commenced business in San Antonio, did you?
A. Yes, sir.
Q. How long did you continue in business before selling out to the Waters-Pierce Oil Company?
1198
A. I think from September—no, from October to—of '93—until the first of October, '94.
Q. Well, about a year?
A. Yes, sir, approximately a year.
Q. Was there any other company doing business there at that time except the Waters-Pierce Oil Company and your company?
A. When I first started the oil business in San Antonio I believe the Rocky Mountain Oil Company had a station there, I am quite sure they did, but soon after I started they quit; they might not

have had it in operation when I commenced, and it might have lasted two or three or four months after that.

Q. Do you know how long they continued in business there?

A. Who?

Q. The Rocky Mountain Oil Company?

A. No, sir, but I think about two years from the time they commenced.

Q. Now, what did you say oil was worth when you went into the business?

A. Either sixteen or seventeen cents.

Q. Is that to the dealer or consumer?

A. Dealer.

Q. It got down to eight or ten cents, I believe you say?

A. Yes, sir.

Q. There was a time in 1896 when it got up to about twenty cents a gallon?

A. I said '96 or '97, somewhere along there.

Q. Well, that was for a very brief period of time, wasn't it?

A. Not very long, I believe.

Q. Well, you know it was a short time?

A. No, I don't know it, but I think it was a short time.

Q. Now, when did this man you say, Locke—is that the name of the man you have been talking about?

1199 A. Yes, sir, J. Locke.

Q. When did he go into the oil business there?

A. I think some time after—oh, he had been in the oil business for years there, in this way: He would ship his oil in in barrels and distribute it around to the trade in barrels. Some time, I think, immediately after 1900 or during the year 1900 he put up some storage tanks and did business that way and shipped his oil in in tank-cars.

Q. Generally, though, he had been in the oil business there for many years?

A. Yes, sir, but he didn't do much business until he put his tanks in.

Q. Well, I am not asking you how much business he did, but he had been in business for many years?

A. Yes, sir.

Q. Now, your company, was it incorporated or not?

A. No, sir.

Q. Any one associated in the company with you?

A. For a while, yes, sir, I think about four or five months from the beginning.

Q. This contract, you heard it read, didn't you?

A. Yes, sir.

Q. Paragraph two, that was erased, wasn't it?

A. Yes, sir. On my duplicate it is scratched a little different from this—lines are drawn through as the writing runs.

Q. Well, it was the intention to erase paragraph two?

A. Yes, sir.

Q. That was with your consent?

A. I did that under instructions.
Q. Well, you consented to it, didn't you?
A. Yes, sir.
Q. You don't remember when that was?
1200 A. Some time in 1900 or 1901.
Q. Well, now, wasn't it in 1900?
A. I could not tell you definitely.
Q. In April, 1900?
A. No, I could not get down to those details; I don't remember; unfortunately, I lost all my—my papers and documents that I saved for ten years last Fall.
Q. Well, who do you say spoke to you about erasing that paragraph in the contract?
A. I received a letter of instructions from St. Louis to carry this contract to Mr. Fries.
Q. Well, you did it?
A. I did so and he erased it in my presence, or I did so, I don't remember.
Q. Now, where were you at the time—in San Antonio?
A. In his office in San Antonio, if I remember correctly.
Q. Now, you carried the contract to Mr. Fries immediately after you received the instructions?
A. Oh, the same day, I presume.
Q. The same day. Do you remember whether you went to his office, or whether it was done at your office?
A. Yes.
Q. Where was it?
A. His office—I am quite satisfied it was.
Q. Well, now, have you a distinct recollection of that?
A. Well, my impression, sir, would lead me to say that I have. I might be mistaken.
Q. Who do you think you received this letter from?
A. Arthur Finlay, I think I received it from Arthur Finlay.
1201 Q. Well, now, isn't it a fact that Fries received the letter and showed it to you?
A. Well, that might be.
Q. Very well.
A. I won't say definitely; I am under the impression, however, that I received a letter to carry this contract to Mr. Fries for these erasures.
Q. Yes, but you won't be certain about that?
A. No, sir, I would not say; I feel reluctant to say that it didn't happen that way, and I am under the impression that it happened as I have stated, a while ago, that I received a letter, and Mr. Fries did also about the same time.
Q. You spoke about the reorganization of the Waters-Pierce Oil Company. When was it reorganized?
A. I don't remember, sir.
Q. Do you remember what year it was?
A. No, I don't know that; I think, however, it was in 1900.

Q. But you are not even certain about that?
A. Well, pretty certain, yes, sir.
Q. How do you fix the time when you changed the contract with reference to the time of the reorganization?
A. By the receipt of my discharge and another letter hiring me over again.
Q. Well, now, about how long before or after the receipt of your discharge and hiring you over again was it that you changed the contract?
A. I think that question was asked me once by the State.
Q. Well, I am asking it.
A. And I said that I thought it was—well, I was rather indefinite, but I would say it was afterwards, and I still am just as indefinite on that point.
Q. Would you say about how long afterwards?
1202 A. No, sir, within six months.
Q. Well, can you undertake to say that that contract was changed after the reorganization of this company?
A. I have already given that as my impression.
Q. Well, do you just give it as an impression?
A. I could not do otherwise, because I have said that I could not definitely mention or name the date when the Waters-Pierce Oil Company was reorganized, but I am quite certain that the erasure was made after I received my discharge and also my reinstatement; I base it on that.
Q. Yes, on that circumstance alone, do you?
A. Yes, sir—not the date of the reorganization of the company.
Q. Now, who wrote this contract?
A. H. Naudain.
Q. Well, the other one, who wrote it?
A. Arthur M. Finlay—the first one, the Synopsis of Contract?
Q. Yes.
A. Arthur M. Finlay.
Q. They were both written in San Antonio?
A. No, sir.
Q. Where?
A. The Synopsis was written in Galveston.
Q. Well, the contract, where was it written?
A. San Antonio.
Q. You kept a copy of it?
A. Yes, sir.
Q. Have you it now?
A. Yes, sir.
Q. Had it all these years in San Antonio?
A. Yes, sir.
Q. The agreement between you and Finlay and Naudain, that was embodied in the contract?
1203 A. Yes, sir.
Q. Now, after the contract was executed you delivered to the Waters-Pierce Oil Company the property of your company and

you continued in the service of the Waters-Pierce Oil Company under that contract?

A. Yes, sir.

Q. You say you sometimes sold oil cheaper than the Waters-Pierce Oil Company?

A. Yes, sir.

Q. You sent your requisitions to St. Louis?

A. Yes, sir, always under their instructions; I never had authority to raise or lower prices half a cent a gallon.

Q. In other words, they told you what they wanted their oil sold for?

A. Yes, sir.

Q. It belonged to them?

A. Yes, sir; there was no discretion left to me at all with regard to raising or lowering prices.

Q. They gave you instructions from St. Louis?

A. Yes, sir.

Q. And you followed them?

A. Yes, sir, to the letter.

Q. Now, you say you gave rebates to some one in San Antonio?

A. Yes, sir.

Q. What year was that?

A. I think up to within a year and a half or two years of the closing out of the business.

Q. Well, was it then about 1902?

A. Yes, sir, I think so.

Q. Now, who was it you gave those rebates to?

A. C. Horan & Company.

Q. What business are they in?

1204 A. They are general merchandisers.

Q. Wholesalers?

A. No, sir, they are retailers, and they have a sort of a railroad supply—supply section houses with material.

Q. They are very large dealers in oil, ain't they?

A. Well, I would not say they are very large, but they are good customers, bang up—not the biggest in town, but they rank along there—used to.

Q. You gave them rebates of half a cent or quarter of a cent?

A. Never run as little as a quarter—half to a cent, or something like that. They would turn them in to our drivers as cash, on the 31st or first or second, figure up their rebate due them and they would turn in their voucher, and he would turn it in to me as cash—they would use it as part payment.

Q. The driver would turn it in to Horan & Company?

A. No, sir, Horan would turn in the voucher to him, and he would accept it as cash and turn it in to me.

Q. But you had many different drivers?

A. Yes, sir; for a long time I used to pay those rebates myself.

Q. You had, first and last, I guess, fifteen to twenty different drivers?

A. No, sir, I will say I had ten.

Q. All right. The drivers knew what it was for?
A. Oh, yes; they didn't for a long time.
Q. Well, they did get the information?
A. Yes, sir, naturally they would.
Q. Well, now, about when did the drivers get the information as to what those vouchers were for?
A. About the time the Waters-Pierce Oil Company sign was put up on my warehouse.

1205 Q. Well, when was that?
A. Some time in 1900 or 1901.
Q. Yes. Well, now, wasn't it in 1900, Mr. Campbell?
A. I don't remember.
Q. It was about the time of the reorganization, wasn't it?
A. Yes, sir, about the same time that the cancellation of that paragraph occurred.
Q. All right. Then, on your warehouse you put up a sign, "Waters-Pierce Oil Company"?
A. Yes, sir.
Q. To give notice to the world that the warehouse was the property of the Waters-Pierce Oil Company?
A. Yes, sir—and we put it up under the eaves where nobody could see it.
Q. Where nobody could see it?
A. Except they went in our yard they could not see it, no, sir.
Q. Well, when they got in your yard they could see it?
A. We didn't allow them in there—we had a high fence there.
Q. Allowed nobody in there?
A. Nobody but interested parties.
Q. Who do you mean by "interested parties"?
A. Drivers and employés.
Q. Who put the sign up?
A. One of the drivers.
Q. Who told him to?
A. I did.
Q. Was that the only sign you had anywhere?
A. Yes, sir, only one reading "Waters-Pierce Oil Company."
Q. Who was present when the sign was put up?
A. John Rothner.

1206 Q. Were you there?
A. No, I don't think I was.
Q. You gave instructions where to put it?
A. That sign was shipped from St. Louis.
Q. All right. You gave instructions where to put it?
A. Yes, sir.
Q. Did you get instructions from any one about it?
A. Yes, sir.
Q. Who from?
A. From some St. Louis official; I think it was Arthur Finlay.
Q. In writing?
A. Sure; yes, sir.
Q. That you lost?
A. Yes, sir; I lost all the papers.

Q. Now, when did you leave the service of the company?
A. Either the first of March or the first of April, 1904.
Q. March, 1904?
A. March or April, 1904.
Q. When did you sue the company?
A. Last year some time—don't remember just the month.
Q. 1906?
A. Yes, sir.
Q. You waited about two years after you were discharged?
A. Yes, sir.
Q. Do you know J. P. Gruet?
A. Yes, sir.
Q. When did you get acquainted with him personally?
A. About ten years ago.
Q. When did you see him the last time?
1207 A. During the Bailey investigation.
Q. When did you see him with reference to bringing this suit against the company?
A. Never saw him with reference—about the suit.
Q. Didn't you talk to him about the suit?
A. I brought it before I saw him.
Q. Didn't you talk to him about it before?
A. I think I did afterwards.
Q. Didn't you write to him about it before?
A. Yes, sir.
Q. You are certain of that?
A. Yes.
Q. Did he write to you about it?
A. If he did, he was mighty guarded in what he said. I don't remember; I think he did.
Q. You think he did? Now, don't you remember he did?
A. No, I don't know that he did. I know this, that I felt more or less disgruntled at him because he didn't write, and jacked him up about it when he came to San Antonio during the Bailey Investigation.
Q. Because he didn't write, you say?
A. Yes, sir; I don't think he ever did answer, except to say that he expected to be in Texas soon and would talk to me then.
Q. Did you have any understanding with him about furnishing testimony in your suit?
A. No, sir; I tell you I filed my suit before I saw Mr. Gruet.
Q. Yes, sir; but hadn't you heard from Mr. Gruet?
A. I had not.
Q. But didn't you have an understanding with him about furnishing testimony?
A. No, sir, most positively not.
1208 Q. Mr. Campbell, did you go to St. Louis to see Gruet?
A. No, I didn't go to see Mr. Gruet; happened to see him while I was there—saw him in his office.
Q. Yes. When was that?
A. I was trying to locate the month; it has been about a year ago; no, it is over—a little over a year ago, or a little less, because I never

leave this country at this time of the year; that must have been in the Winter, about two years ago this coming Winter.

Q. When was it with reference to the time your suit was brought?

A. Before.

Q. Did you see Hurley in St. Louis?

A. Yes, sir.

Q. What are his initials?

A. I don't know.

Q. Talked to him about the case, didn't you?

A. He was listening.

Q. Knew Gruet had been secretary of the company?

A. Me?

Q. Yes, sir.

A. Oh, yes—yes, sir.

Q. Did you know at that time that he had a contract for a part of the penalties in this case?

A. I did not.

Q. When did you get that information?

A. Saw it in the newspapers.

Q. Didn't Gruet tell you about it?

A. No, sir.

Q. Didn't you arrange to testify in this case, and Gruet in your case?

1209 A. Most positively not.

Q. Didn't he talk to you about testifying in this case, coming here to Austin?

A. I happened to meet Mr. Gruet in Austin; I don't remember just when it was, but I was over here, if I remember correctly, as a witness before the Railroad Commission and Mr. Gruet was in the Driskill Hotel; and the way I happened to meet Mr. Lightfoot, Mr. Gruet took me over and introduced me to him.

Q. Mr. Campbell, didn't he talk to you about testifying in this case?

A. Why, naturally, we discussed it.

Q. Didn't he directly solicit your testimony in this case, and promise to help you in your suit in San Antonio?

A. If you cut that right in two, yes, sir. He didn't promise to help me in my suit in San Antonio, and I never asked him to. I took his deposition. Had no arrangement whatever for the exchange of testimony—none whatever.

Q. Now, you said a minute ago for me to cut it in two. What was it you wanted cut out?

A. I wanted the latter part cut out.

Q. That he solicited your——

A. No, you couldn't use that word; that's too strong. He didn't solicit my——

Q. Well, what did he say about it, Mr. Campbell?

A. I think he said, "You would be a valuable witness"—referring to me—"in the prosecution of the State in this ouster case." I can't remember. If there is anything direct or definite you want and will state it, I will answer it.

Q. Did he tell you he was interested in this case and wanted your testimony?

A. No.

1210 Q. Didn't he tell you he was interested in it?

A. No, I don't think he did that. I quizzed him to find out if he had any other motive than—than just a grievance against the company, and I couldn't get anything out of him, and I never knew what the motive was until I read in the papers that came out in the recent investigation that he was interested in a part of the penalties.

Q. Now, was it after that that he took you around to see Mr. Lightfoot?

A. After I read this in the papers?

Q. Oh, no.

A. Well, what?

Q. After you had this conversation with him.

A. It was the same day.

Q. Then he asked you to come around and see Mr. Lightfoot?

A. Yes, sir.

Q. And that was about how long ago?

A. I don't remember that; I think it was last Fall some time, wasn't it? I think it was last Fall.

Q. Wasn't it before the suit was brought?

A. Before my suit?

Q. No, this suit.

A. I don't know when this suit was brought. Tell me the date and I can come closer to it. Would Mr. Gruet's deposition be taken before the suit was brought, or after? Then I can answer.

Q. Ordinarily taken after a suit was brought.

A. Then I saw him after the suit was brought, because he signed the deposition the day I was with him.

Q. Now, didn't he write you to come to St. Louis and see him before bringing your suit?

A. Mr. Gruet and I never had any correspondence amounting to anything in regard to my suit?

1211 Q. Now, Mr. Campbell, didn't Gruet write you to come to St. Louis before you went there, or telegraph you?

A. In other words, for me to come—he sent for me, and that's the reason I went to St. Louis?

Q. Now, that's what I am getting at.

A. No, sir, he did not. No.

Q. Didn't he write to you, though?

A. To come to St. Louis?

Q. Yes, sir.

A. No, sir.

Q. Telegraph you?

A. No, sir.

Q. Didn't Hurley write you?

A. No, sir. I think I saw Gruet when I was on my way to Ohio to visit my father, who was sick, and it was on my way coming back. Naturally, I wouldn't stop longer than necessary going up.

Q. Now, after seeing Gruet and Hurley in St. Louis, you returned to San Antonio and brought suit?

A. No, I didn't right away.

Q. Well, a few days?

A. Well, a few weeks, I guess.

Q. Well, a few weeks?

A. Now, I couldn't say whether I had brought that suit before. Yes, sir, it was, I think it was after that.

Q. Now, didn't you bring the suit as the result of the conversation you had with Gruet and Hurley in St. Louis?

A. No.

Q. You say that you didn't talk to him about bringing this suit there? Didn't Gruet advise you there in St. Louis, Mr. Campbell, to bring this San Antonio suit?

1212 A. No, I don't think he did. If I had known it was going to be this important I would have remembered all these details.

Q. I didn't understand what you said about the importance.

A. I said if I thought it was going to be this important and that I would have been on the stand to testify, I would have made mental or written notes and given you definite dates, but I can't do it now.

Q. All right. Now, you were entirely friendly with the company and wanted re-employment up to the time you saw Gruet in St. Louis?

A. No, my feet got cold on the company before that.

Q. How long before?

A. Some time.

Q. Now, for two years or more you wanted to be re-employed?

A. No, not two years.

Q. Well, a year and a half?

A. I made over ten thousand dollars last year and didn't want any Waters-Pierce job.

Q. Out of selling onions?

A. No, not only onions; out of selling wheat and watermelons and the general run of my business.

Q. Then, for at least a year you were friendly and wanted re-employment?

A. Very friendly, and wanted re-employment.

Q. No grievance?

A. Yes, had a grievance, but didn't have it right away. When they fired me I wanted it then.

Q. Didn't get a grievance right away?

A. Yes, that was my grievance,—for not getting re-employment after firing me. I was figuring on going to Mexico for them. That's one reason I didn't file suit right away.

Q. What reason?

1213 A. I figured on getting a good job in Mexico. They are dissatisfied down there and all mixed up, and I thought they needed a good man and figured on it.

Q. But they didn't think they needed you?

A. No, they didn't think they needed me; some of them did, I learned later on, but my alleged friend C. L. Ackert didn't.

Q. And they are getting along all right without you?
A. Yes, sir, and I am getting along all right without them.
Q. I want to get back to this sign a minute. About this sign,—what instructions did they give you about this sign?
A. Put it up on the warehouse.

Mr. ODELL: That's all.
Mr. LIGHTFOOT: That's all, Mr. Campbell.

1214 Mr. LIGHTFOOT: We next offer a portion of the deposition of H. J. COHN.

Interrogatory 1. What is your name, residence and business?
Answer. H. J. Cohn,—residence, 4156 McPherson, St. Louis; business, oil salesman.
Interrogatory No. 2. State whether or not you ever had any connection with the Waters Pierce Oil Company. If so, state when it began, how long it continued, and the character of your employment.
Answer. I can't give you those dates except by referring to—I was connected with the Waters Pierce Oil Company, off and on, for about ten years,—I filled various positions, from office-boy to division auditor and salesman.
Interrogatory 3. State whether or not you have worked for the Waters Pierce Oil Company in St. Louis. If so, state the time covered by your employment there, and state under whom you worked.
Answer. I have—I worked from April, 1900, until September 30, 1902; I worked under Mr. C. L. Ackert.
Interrogatory 4. If you have said that you worked under Mr. Ackert, state what his connection with the Waters Pierce Oil Company was, and state what you did under him.
Answer. I first worked under him when he was assistant manager of the Missouri Division, and he was later made manager for Missouri division. I was division auditor and salesman in Missouri under him.

Mr. LIGHTFOOT: There is no No. 5. There is a typographical error here. The next Interrogatory is No. 6; it skips from 4 to 6.

Interrogatory 6. Were you familiar with the territory in which the Waters Pierce Oil Company did business? If so, state how you became familiar with it, and state what it was.
1215 Answer. I was. The territory was bounded by Moberly, Missouri, on the west and an imaginary line was drawn south, which took in Joplin and Carthage on the south.
Interrogatory 7. During the time you were with the Waters Pierce Oil Company, state whether or not the Standard Oil Company sold oil in the territory you have designated as Waters Pierce territory.
Answer. They did not.
Interrogatory 8. During the time you were connected with the Waters Pierce Oil Company, state whether or not the Waters Pierce Oil Company sold, or undertook to sell, any oil outside of the territory designated by you as Waters Pierce territory.
Answer. To my knowledge, they did not.

(Interrogatory 9 and answer were omitted.)

Interrogatory 10. During the time that you were connected with the Waters Pierce Oil Company, state whether you had any knowledge of the firm of Scofield, Shurmer & Teagle. If so, state what became of the business of that firm.

Answer. I knew of them, in a business way, as being a strictly independent oil company and they were absorbed by the Republic Oil Company, who took over plants at St. Louis and Springfield, which were the only plants I came in contact with.

(Interrogatories 11, 12, 13, 14, 15 and 16, and answers, were omitted.)

Interrogatory 17. Please state whether or not during the time you were employed by the Waters Pierce Oil Company you were ever stationed in Texas; if so, where were you stationed, how long did you remain in Texas, and what was the nature and character of the duties you performed in Texas for the Waters Pierce Oil Company?

1216 Answer. I was stationed at Marshall, Texas, for a period of about eight years, filling positions from office-boy to salesman and division auditor.

Interrogatory 18. If in answer to the foregoing question you have stated, or if it be a fact, that you were stationed at Marshall, Texas, then state whether or not you have any information as to the source from which the Waters Pierce Oil Company obtained its supplies for use in Texas.

Answer. At that time it received the greater part of its supplies from the Standard Oil Company refinery at Whiting, Indiana, and a refinery at Corsicana, Texas, in addition to receiving its railroad oil, which originally came from the Galena Signal Oil Company, at Franklin, Pennsylvania; these railroad oils were sometimes loaded with other oils in mixed car-lots from St. Louis.

Interrogatory 19. What kind of a station did the Waters Pierce Oil Company have at Marshall? Please state whether or not it was a division point for any territory; if so, what territory was embraced in that division, and whether or not the requisitions for supplies from local stations in its territory were handled through that office.

Answer. At Marshall they had division headquarters for the East Texas and Louisiana division. It was a division point and controlled quite a large number of stations in eastern Texas, and all of north Louisiana and part of southern Louisiana, almost as far south as Morgan City; and bounded on the east by the Mississippi river. And all requisitions were sent to Marshall for all supplies for all stations in the east Texas and Louisiana division.

Interrogatory 20. Please state whether or not during the time you were located in Texas you represented the Waters Pierce Oil Company in the capacity of traveling salesman; if so, in

1217 what territory did you travel.

Answer. In the east Texas and Louisiana division.

(Interrogatory 21 and answer were omitted.)

Interrogatory 22. Please state whether or not while representing

the Waters Pierce Oil Company in Texas you ever met in competition or otherwise any representative of the Standard Oil Company of New Jersey, or the Standard Oil Company of Indiana, or the Standard Oil Company of Kentucky, or the Standard Oil Company of Ohio, or the Standard Oil Company of New York, or the Continental Oil Company of Denver, or the Standard Oil Company of Chicago, or the Standard Oil Company of Baltimore, or the Republic Oil Company of Ohio.

Answer. I did not.

Interrogatory 23. Please state whether or not while you were employed by the Waters Pierce Oil Company in Texas, the Corsicana Refining Company of Corsicana, Texas, or the Security Oil Company of Beaumont, Texas, sold any oil to the retail trade in your territory in competition with the Waters Pierce Oil Company.

Answer. To my knowledge they did not.

Mr. LIGHTFOOT: That's all we care to offer of that.

Mr. LIGHTFOOT: We next offer a portion of the deposition of H. C. ARNOLD.

Interrogatory 1. What is your name, what is your business, and where do you reside?

Answer. H. C. Arnold; accountant; New York City.

Interrogatory 2. If you say you are an accountant, state by whom you are employed, and where your office is.

Answer. Standard Oil Company of New Jersey; 26 Broadway, New York City.

1218 Interrogatory 3. How long have you been an accountant for the Standard Oil Company?

Answer. Two years.

Interrogatory 4. Before that time, what did you do?

Answer. I was assistant in the same department.

Interrogatory 5. If you say that you were an assistant accountant, state to whom you were an assistant.

Answer. R. P. Tinsley.

Interrogatory 6. If you have said, or if it be a fact, that you are an accountant and were formerly an assistant accountant for the Standard Oil Company, state what Standard Oil Company you are connected with, and if you have connections with more than one company, state each of them.

Answer. Standard Oil Company of New Jersey, Standard Oil Company of New York, the Atlantic Refining Company.

Interrogatory 7. State specifically and in detail your present duties, and state specifically the companies for which you are doing accounting, and define the duties performed by you with reference to each company.

Answer. Well, I am the accountant, receiving reports of sales. Standard Oil Company of New Jersey, Standard Oil Company of New York, the Atlantic Refining Company. My duties are as stated in the former answer. Receiving the sales.

Interrogatory 8. Do you in your capacity of employment by the

Standard Oil Company or otherwise know of the Waters Pierce Oil Company?

—. Yes, in a general way.

Interrogatory 9. Do you know R. H. McNall? If so, state how long you have known him, and what position he had when you first knew him.

Answer. Yes, I know him, about 25 years. A general clerk, I should say.

1219 Interrogatory 10. If you say he was connected with the Pratt Works, state whether or not this concern was connected with the Standard Oil Company.

Answer. It was Charles Pratt and Company at that time. It was not connected with the Standard Oil Company at that time.

(Interrogatories 11, 12 and 13, and answers were omitted.)

Interrogatory 14. Do you know a Mr. King, whose office is in 26 Broadway? If so, what is his position, and state if you have any business relations with him.

Answer. Yes. I don't know that he has any official position. My business relations with him,—I furnish him with reports of sales.

Interrogatory 15. If you have said that you make up figures for or furnish statements to Mr. King, or if it be the fact, then state what these figures and statements are with reference to, and if you say they are for sales, then state what company or companies they are sales of.

Answer. Well, they are reports of sales and of the Standard Oil Company of New York.

(Interrogatory 16 and answer were omitted).

Interrogatory 17. State whether or not you are acquainted with R. P. Tinsley.

Answer. Yes.

Interrogatory 18. Where did he reside in October, 1904, and with what company was he connected?

Answer. New York City; Standard Oil Company of New York.

Interrogatory 19. I copy a letter, purporting to be signed by you and addressed to R. P. Tinsley at St. Louis. State whether or not this letter was signed and sent by you, and explain what cor-

1220 respondence was referred to in the last two paragraphs of the letter, and explain the transaction referred to in the second paragraph of

"DEAR SIR: We beg to acknowledge your personal favor of the 8th inst., and note with very much gratification the statement you make with regard to Mr. Preston's services while with you. We are very glad to hear that he will soon be with us again, and while we have not heard from him direct as to his movements, we suppose he will leave on or about the 12th.

As per recent correspondence, please find enclosed a charge for the two-tank wagon sales records sent you in September, which kindly pass to our credit.

If there are any copies of letters, circulars, etc., that you still desire, please let us know and we shall be pleased to favor you.

Yours truly,

(Signed) H. C. ARNOLD."

Encl. 1.

Judge STEDMAN: May it please Your Honor, we object to the interrogation concerning that letter and the witness's answer in respect thereto, for the reason that there is no date given and we are unable to tell whether it had anything to do with this matter or not.

Mr. BRADY: If the Court please,—we suggest that in a former interrogatory, namely, Interrogatory 3, in answer to that interrogatory he says that he has been in the employ of this company for two years, and, of course, it must have been within that time, as it was done by him.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

1221 Answer. Yes, this letter was signed and sent by me. Well, the answer to that is the recent correspondence was in connection with the book referrel to in the question, and with regard to letters he asked for, that was for instructions as to an accounting office. The phrase "tank wagon sales records" are blank books only. That was a bill for those two books.

Interrogatory 20. State whether or not it was your custom when you *were* sent books and records to the Waters Pierce Oil Company in Missouri, to make a charge against that company.

Answer. We did not send any books, except blank books, and no records. We rendered a bil to that company for those two books. We sent no books or records.

Interrogatory 21. What was the reason or occasion for sending books and records to the Waters Pierce Oil Company at St. Louis?

Answer. We did not send any.

Interrogatory 22. In writing letters to R. P. Tinsley with reference to sales and with regard to books and records which you charged to the Waters Pierce Oil Company, state in what capacity you were acting, and in what department of the Standard Oil Company of New Jersey.

Answer. We did not write—I did not write to Mr. R. P. Tinsley about sales and books and records. I did write about blank books only.

Interrogatory 23. Explain the first paragraph of your letter heretofore copied to Mr. Tinsley concerning Mr. Preston.

Answer. Mr. Preston was there to assist in straightening out accounting matters, in which he is considered an expert.

Interrogatory 24. State whether or not you sent Mr. Preston to Mr. Tinsley; and if so, state for what purpose Mr. Preston was sent, and in what capacity.

Answer. I sent Mr. Preston there, and the answer to the
1222 previous question answers that question. His capacity was statistical.

Mr. LIGHTFOOT: That's all we offer of that.

The COURT: We will adjourn until half past nine o'clock to-morrow morning.

TUESDAY, *May* 28, 1907.

Court opened at 9.30 a. m.

A. W. CLEM, a witness for the Plaintiff, testified as follows:

(Examination by Mr. BRADY:)

Q. What is your name, please?
A. A. W. Clem.
Q. Where do you reside, Mr. Clem?
A. Dallas.
Q. How long have you lived in Dallas?
A. About seventeen years.
Q. How long?
A. Seventeen years.
Q. Seventeen years. What business are you engaged in at Dallas, Mr. Clem?
A. Oil business.
Q. At the present you are?
A. Yes, sir.
Q. Well, for whom are you working, if anybody, or are you in the business for yourself?
A. I am in the business for myself now.

1223 Q. What character of business are you doing, with reference to whether it is supplying the trade or supplying consumers?
A. At present?
Q. Yes, sir.
A. I am supplying the trade.
Q. I will ask you to state, Mr. Clem, whether or not you were in the oil business at Dallas about the year 1890?
A. I began the oil business, I think, in '90,—1890.
Q. In what name did you do business there at that time?
A. In the name of the Eagle Refining Company.
Q. State whether or not there was a concern by that name in Cleveland, Ohio.
A. There was; it was a corporation, at Cleveland, Ohio.
Q. I will ask you whether or not you know that that concern was affiliated with the Standard Oil Company or the Waters Pierce Oil Company at that time?

Mr. ODELL: We object to that for the reason that the inquiry is directed to the year 1890,—ten years before the organization of this company, and is about matters not shown to be acquiesced in by the defendant in this case, and therefore is prejudicial.

The COURT: The objection is overruled.

Mr. ODELL: We except.

A. Why, I was always of the opinion——

Mr. ODELL: Now, we object to his stating what was his opinion——

The COURT: The question is whether you know.

Q. In 1890?

A. Well, I can't,—I actually couldn't answer that; I do not know.

Q. Well, you don't know. All right. Will you state what equipment you had in Dallas for the supplying of the trade in 1890 and up until 1894?

1224 A. We had storage tanks and iron barrel delivery; I don't think we had any tank wagons at the time.

Q. How many storage tanks did you have?

A. We had three.

Q. The capacity of those tanks, please.

A. They held about 6,000 gallons each.

Q. The iron barrel trade, about what did that amount to?

Mr. ODELL: We object to this testimony as being wholly irrelevant and immaterial, in detailing by the witness his business in 1890, or 1894, six years before the organization of this company. It is an inquiry that could throw no possible light on this case, as to whether the business was a large or a small one, or whether he was a large or small dealer, or the capacity to do business.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. About what was the extent of your iron barrel trade?

A. You mean the amount of iron barrels?

Q. Yes.

A. We did practically the bulk of our business in iron barrels; we were shipping about 40,000 barrels a month.

Q. Including your shipment sales?

A. Yes, sir, we did some.

Q. Now, where did you get your supply of oil?

A. Well, it was shipped us from the Eagle Refining Company, of Cleveland, Ohio. I would send my orders to them and it would come to me part of the time from there, and then they had a little refinery at Lima, Ohio, but they discontinued that, I think, and began shipping us then from Toledo, Ohio, from the Craig Oil Company and S. Y. Ramage, of Oil City, Pennsylvania.

1225 Q. These supplies came on requisition through Cleveland, from Cleveland, Oil City,——

A. Yes, sir.

Q. What character of shipments did they make; tank-cars or otherwise?

A. It was come in tank cars practically——

Q. What character of tank cars; whose tank cars?

A. They had their own tank cars, but sometimes they would come in outside cars. S. Y. Ramage would ship us in his cars, may be——

Q. Now, what territory did you operate in, and in what counties? In what territory did you supply the trade from Dallas?

A. Well, I covered pretty much the whole State of Texas, but, of course, I was limited to a small area around Dallas; in car-load business, though, I would ship oil in car-loads to all towns in the Indian Territory, and I would do quite a local business. I would ship iron

barrels to Pecos or Midland, out on the Midland road, and Ada, New Mexico,—I believe they call it Carlsbad now.

Q. State whether or not you did any business out at Seymour.

A. Well, I remember putting in a carload of oil at Seymour.

Q. Now, I will ask you, Mr. Clem, to state at what prices you were selling oil at at Seymour?

Mr. ODELL: We object to that, Your Honor, as being immaterial and irrelevant,—the prices he was selling oil at at Seymour or *wlse*-where. It throws no light on anything in this case; it is a manner of conducting his business unknown to the defendant, not acquiesced in by the defendant or in any manner illustrating the method of the defendant's doing business at that time.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. At what prices were you selling this oil at Seymour?

1226 A. Well, I went to Seymour, working car-load lot business, and putting in a carload there and shipping it direct from the refinery——

Q. Well, at what price?

A. I sold it in car-lots at 16¢, delivered.

Q. Was the Waters Pierce Oil Company selling any oil at Seymour at that time?

A. They were selling all the oil there at the time.

Q. Now, what experience did you have at Seymour with reference to prices with the Waters Pierce Oil Company oil? In what year were you selling this oil at Seymour?

A. It was in 1891, as well as I remember.

Mr. ODELL: We object to that, Your Honor, because it is shown to be nine years before the organization of this company, and is immaterial and irrelevant.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. You say you think it was in the year 1891?

A. Yes, sir.

Q. Now, the question I asked you was, What experience you had with the Waters Pierce Oil Company, in person, in competition, as to prices at Seymour when you put that oil in?

A. Well, I was informed by the railroad agent at Seymour,——

Mr. ODELL: We object to what the railroad agent told him, as being hearsay.

The COURT: The objection is sustained.

Q. You need not state what the railroad agent told you. You should tell what happened with reference to prices.

A. Well, I went up to make the delivery of the car, and I found that most of my merchants refused to take the oil they had bought; I made this car up from various merchants, in fact, all the merchants in the town.

1227 Mr. ODELL: We object to that your Honor, and ask that the answer of the witness be excluded, because it suggests the

independent action of merchants made in the absence of the defendant, and an act that——

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. Well, what did you find about these merchants when you came to deliver the oil?

A. Well, the merchants, practically all, refused to take the oil. One merchant, he was retailing oil at 15¢, a cent less than they had paid me for their oil, and they refused to take the oil unless I would meet competition.

Q. Well, did you meet the competition?

A. Well, I had ten barrels of oil consigned in that car, and I told them I would give them a barrel a piece of that oil, if they would meet competition with it.

Q. Well, did you dispose of your car there or not?

A. Why, some of the merchants afterwards *taken* their oil, and some of it I stored, and some leaked out—a good deal of it did.

Q. Now, of the competition you spoke of, whose competition was that, Mr. Clem?

A. Well, the Waters Pierce Oil Company was selling the oil to the merchants.

Q Q. What cut did they make in the prices that you were to reach; what minimum did it reach?

A. Five cents a gallon.

Q. What was the price of their oil at the time you brought that oil into Seymour?

A. They were charging the merchants 35¢ for Eupion, so I was told by the merchants.

1228 Mr. ODELL: We object to the statement that he was told by the merchants.

The COURT: The objection is sustained.

Q. What price did you find prevailing there at the time you were there with the car of oil? The Eupion Oil,—what prices were prevailing?

A. At the time I went to make the delivery?

Q. Yes, sir.

A. Fifteen cents—that was the retail——

Q. Well, when you went there to take the orders,—what price did you find prevailing?

A. Thirty-five cents a gallon, wholesale.

Q. And what was the minimum price the oil reached there?

A. Five cents.

Q. Dropped to five cents. Did you do any more business at Seymour?

A. Never tried.

Q. That was your last experience at Seymour?

A. Yes, sir.

Q. Now, what per cent. of the business, Mr. Clem, was the Waters Pierce Oil Company doing, including your business, at the time they took over your plant in 1894; if they did so?

A. After they taken over my business?
Q. Yes; about what per cent. of the business did they do in that territory?
A. Well, including my business, which they had bought out, they were doing all the business in my territory.
Q. Did they have any competition there at all?
A. None at that time.
Q. Do you remember what price was prevailing in 1894, when they took over your plant; I mean contemporaneously with it,—within a few days of it?
1229 A. Why, the price in Dallas was nine and a half cents a gallon for Pennsylvania Water White.
Q. Do you remember the price of Eupion at that time?
A. About the same.
Q. What change, if any, in the way of advance or reduction of prices at the time your plant was taken over by the Waters Pierce Oil Company, took place?

Mr. ODELL: We object, for the reason that it is shown that the inquiry is directed at methods prevailing in 1894, six years prior to the organization of this company, and for many years prior to the enactment of the anti-trust act of 1899 or of 1903, under which this suit was brought.
The COURT: The objection is overruled.
Mr. ODELL: We except.

A. Well, prices advanced after that.
Q. Now, to what extent did they advance from nine and one half cents, then prevailing?
A. They went up to about twenty-two cents, on the basis of Eupion, that is gradually,——
Q. Now, what space of time intervened during which that rise was accomplished, from nine and one half cents to twenty-two cents?
A. What space of time?
Q. Yes.
A. As well as I can remember, it was four or five months.
Q. It was a gradual rise, you say?
A. Gradual rise; about a cent at the time.
Q. Now, state to the Jury, if, during that four or five months—what competition, if any, prevailed in Dallas and that territory, against the Waters Pierce Oil Company after their purchase of your plant?
1230 A. No competition that I know of; the Waters Pierce Oil company and the Eagle Refining Company were the only ones doing business there.
Q. When they absorbed your plant, there was no competition left?
A. No competition.
Q. How long was it before any competition came into Dallas, after your plant was absorbed?
A. It may have been a year or two years.
Q. I will ask you whether or not the price of 22¢ per gallon prevailed during that year or two, or not?

A. Well, of course, prices gradually came down a little after competition began to move around.

Q. Well, I mean before the competition came in; during the year before the competition came, how did they range as to prices?

Q. As well as I remember,—I don't think there was any decline. I think it got up to 17¢ and 22¢,—17 for Brilliant and 22 for Eupion.

Q. There is a difference of five cents a gallon in those two oils to the trade?

A. They make about that, yes.

Q. Now I will ask you to state whether or not your plant, from the years 1890 to 1894, constituted any considerable competition to the Waters Pierce Oil Company, or not?

Judge PENN: We object to that as calling for a conclusion of the witness, Your Honor. We think if the testimony is admissible, he should be required to state the facts.

The COURT: The objection is sustained.

Q. Well, about what per cent. of the business did you do, as compared with the Waters Pierce Oil Company, in Dallas and surrounding territory, during those four years?

1231 A. Well, of course, I don't know exactly the percentage. You take the oil business as a whole, I couldn't figure out what per cent. I did in that territory.

Q. Well, can you approximate it?

A. Well, I should think about three per cent. would be a fair average; three or four per cent.

Q. Well, you were the only active competitor they had at that time?

A. Well, when was that?

Q. Between 1890 and 1894?

A. Yes, sir; I was the only active competitor they had in that territory.

Q. Did you have an office and plant there, or not?

A. Yes, I had an office, plant and warehouse.

Q. Warehouse, or not?

A. Yes, sir.

Q. Just describe your equipment to the Jury; about what you had and the number of employees, and your expenses per month during those four years.

A. Well, I had three storage tanks, of about eighteen or twenty thousand capacity; I had about 350 iron barrels; I had a couple of wagons; myself, a bookkeeper and two drivers.

Q. Did you have a regular bookkeeper employed?

A. Yes, sir.

Q. Gave your personal attention to the business?

A. Yes, sir.

Q. And had two drivers?

A. Yes, sir.

Q. Did you pay office rent, or not, or did you own the property?

A. Well, it was on leased property; I paid ten dollars a month on the leased property.

1232 Q. Ten dollars a month on the leased property?
A. I put the building on it—a two-story, 40x50, iron-clad, with a gravel roof.
Q. That was put on after you rented the unimproved property?
A. Yes, sir.
Q. What was the value of your property after the improvements were put on, Mr. Clem?
A. Why, $25.00 per month, I suppose.
Q. Now, I will ask you to state to the Jury, whether after the purchase of your plant by the Waters Pierce Oil Company, the Eagle Refining Company's business was transacted at the same place, or whether the equipment was moved over to the Waters Pierce Company's oil plant, and the office rent saved there, or whether you performed the business at the same old place?
A. I performed the business at the same old place.
Q. Did you keep your two drivers?
A. Yes. Now, one of those men acted part of the time as driver and part of the time as warehouseman.
Q. Did they remain in your employ?
A. Yes, sir.
Q. Did the bookkeeper remain?
A. Yes, sir, I always kept the bookkeeper.
Q. How many years did you remain with the Waters Pierce Oil Company, running the Eagle Refining plant?
A. About nine years; from 1894 to 1904.
Q. This warehouse and office equipment was kept at the same old place during that time?
A. Yes, sir.
Q. I will ask you to state where this plant was,—whether in the heart of the city or an isolated place?
1233 A. Well, at the time I built this plant, it was a kind of an isolated place, but it grew to be rather public property, or has grown at least at this time, to very public property.
Q. Well, where was it situated?
A. Why, it was located in what we call South Dallas, near Katy, near the Katy and the Dallas Rapid Transit terminal——
Q. Well, how close to any creeks or streams?
A. Well, it was like on a creek, that is, a branch, with a big bluff to it.
Q. Like on a branch?
A. Branch, yes.
Q. Was the front or the back fronting that creek?
A. Well, the warehouse fronted out on the level, but the back of it fronted on the creek; it was built on the edge of a bank.
Q. How many years did that remain a rather isolated place?
A. Well, that—really up to some three or four years ago, it was practically isolated.
Q. When they got up the 150,000 Club?
A. Yes.
Q. Well, now, Mr. Clem, you say that you were in business there four years under the name of Eagle Refining Company for yourself.

I will ask you to state whether you knew the manager of the Waters Pierce Oil Company during those four years.

A. Yes, I knew him.

Q. Who was he?

A. Mr. Grice was manager at that time.

Q. Did you know C. W. Cahoon?

A. I didn't know Mr. Cahoon at the time; I wasn't personally acquainted with him, you might say.

Q. Did you know whether he was in the employ of the office at that time?

1234 A. No, I don't know; it occurs to me that he came there about that time.

Q. Now, I wish you would state to the Jury what methods the Waters Pierce Oil Company employed in meeting your competition during the four years that you were in business for yourself, and what conversations you had with Mr. Grice, the substance of the conversations you had with Mr. Grice, in reference to your business,—the general conduct of the Waters Pierce Oil Company towards your competition.

Mr. ODELL: We object, Your Honor, to this particular question, for the reason, in addition to those heretofore given, that it calls for conversations with a local agent of the company at Dallas, who is not shown to be in such a position of authority with reference to the company as that he was authorized to bind the company or prejudice the company by any statement, that he might make, and that it is hearsay as to the defendant, for the reason that he occupied no such official position with reference to the company as that he might prejudice or bind it by his statements.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Judge PENN: We wish it to be understood, Your Honor, I think it is covered by the previous rulings,—that we are objecting to all testimony of Mr. Clem with reference to transactions prior to the organization of the present company,—as being irrelevant and immaterial to any issue in this case, as occurring before the enactment of the present anti-trust laws, or the act of 1899, and on the ground that this company could not be bound by anything done by a former company, and that the acts are not shown to be unlawful. We consider, and so understand Your Honor, that our previous objections have covered this as to this testimony, but we wish it now to affirmatively appear in the record that all of these objections

1235 were made to this testimony.

The COURT: You may have your bill so showing.

Mr. BRADY: Please read the question, Mr. Stenographer. (Question was re-read).

A. Well, of course, to begin, I will state that their manner of competition is generally known——

Q. Well, Mr. Clem, we prefer instead of what the generally known methods are, just what your experience was.

Mr. ODELL: We ask that the answer be excluded?

The COURT: What is the answer you want excluded?

Mr. BRADY: I think he was just leading up to his answer.

The COURT (to witness): The question, Mr. Clem, is—what character of competition you met with there, and what conversations you had with the manager of the Waters Pierce Oil Company on the subject of competition?

A. Well, I understand, and I am going to answer. Well, when I first began the oil business in Dallas, I began by shipping carloads into Texas; the first carload I sold was in Dallas. The merchants there were paying 23 cents for Eupion and 17 for Brilliant in bulk, and they were paying 2.40, or 24 cents a gallon in 2-5 cases for Brilliant, and 37½ cents a gallon in 2-5 cases for Eupion. Now, I made up a carload of oil with some two or three merchants in Dallas. I think I charged them, delivered there in wood barrels, about 17 cents a barrel——

Mr. ODELL: Please state the year.

A. That was in 1890, I think, because it was the first carload I sold. Well, I then went down to Terrell, and the merchants were paying there about the same price. I put in a carload, and came back to Dallas. That night I went to McKinney and put in a car; and I had, I suppose, some 15 or 20 carloads on the road here at one time. For instance, at the little town of Lancaster, 16
1236 miles from Dallas, I put in a carload to one man, M. B. Johnson. He told me he would take a car if I would not sell anybody else in the town. Then when Mr. Johnson's oil arrived, as well as at other places, why the Waters Pierce Oil Company's agent went out there and made arrangements with the other merchants to retail oil at ten cents a gallon, and they retailed it as long as Mr. Johnson had any. That was about the condition at Lancaster; and it was about like it at other places, whenever the oil arrived.

Mr. ODELL: We object to that as the conclusion of the witness, and not a statement of facts.

The WITNESS: It was no conclusion at all, because I would be out there and see the merchants selling it at ten cents a gallon, when my oil arrived. That was about the condition, you know, wherever I put in a carload of oil. The carload business soon played out, from the fact that the merchants were afraid to buy——

Mr. ODELL: Now, we object to that as being a conclusion and hearsay.

The COURT: The objection is overruled.

Mr. ODELL: We except.

A. I then put in storage tanks and iron barrel equipments and localed my oil out to various merchants where I had been putting in carloads; but the carload business didn't last long.

Q. Now, give your experience with reference to the iron-barrel business, which succeeded the carload business.

A. Well, whenever I put in iron-barrel shipments, of course, they would keep track of them; they had men to look after every barrel I shipped out.

Mr. ODELL: Your Honor, we object to that and ask that it be excluded, because it is evident the answer of the witness is hearsay and is a conclusion and opinion, rather than the statement of any fact.

1237 The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. Well, what became of your iron-barrel business, what effect did it have?

A. Why, the prices were reduced; in fact, the prices came all to pieces when I began selling oil, and we never did get prices back to where they were, where there was any profit in the oil business.

Q. Now, the prices that were made in competition with you,—reduced down all to pieces; what effect did it have on your profits and your business as a going concern?

Mr. ODELL: We object to that, Your Honor, because the effect that it had on his profits is not a subject of material inquiry, and calls for the conclusion and opinion of the witness; as to whether he made a profit, does not indicate as to whether or not the Waters Pierce Oil Company made a profit.

The COURT: The objection is overruled.

Mr. ODELL: We except.

A. Why, it cut my profit down, as a matter of course. Where I was really entitled to three cents a gallon on oil, why a great many places I would sell as low as a cent a gallon—fifty cents a barrel—profit; even in some cases for less.

Q. Well, state whether or not you had occasion to sell at a loss at places, or not.

A. I had opportunity to sell at a loss, but I don't remember that I ever sold at a loss.

Q. Well, what was the result, as to whether or not you got the business?

A. I pegged out.

Q. Did you get the business?

A. No, I quit it.

1238 Q. Now, in 1894, I understand you to say that there was a contract made; well, before—I will withdraw that question for the present. I will ask you if you know Mr. A. M. Finlay, that is to say, A. M. Finlay who was once vice-president of the Waters Pierce Oil Company?

A. Yes, I know him.

Q. Are you familiar with his signature?

A. Yes, I know his signature.

Q. I will ask you to examine this letter and examine particularly the signature, and the entire letter, and then I will ask you a further question. (Hands paper to witness).

A. That's his signature.

Q. I will ask you whose signature that is to that instrument.

A. That is Andrew M. Finlay's.

Q. Former vice-president of the Waters Pierce Oil Company?

A. Yes, sir.

Q. Where did you get this instrument, Mr. Clem?
A. Why, I got that from H. A. Dennett.
Q. Who was he?
A. He was at one time the cashier of the Waters Pierce Oil Company; in 1891 or '92.
Q. At what time?
A. 1891 or '92,—somewhere——
Q. Do you know whether or not Mr. Dennett was the cashier of the Waters Pierce Oil Company at Dallas at the time you engaged in business for yourself there?
A. I don't know whether he was at the time I engaged or not, but during the four years I was in business for myself, he was.
Q. Well, was he the cashier at the date of this letter,—April 28, 1901?
A. Yes, sir.

1239 Mr. BRADY: Well, we offer this letter.
Mr. ODELL: I would like to ask a preliminary question:

Q. You were asked a minute ago by Mr. Brady, if this man Dennett was cashier of the Waters Pierce Oil Company in 1901.

Mr. BRADY: I meant 1891.
Mr. ODELL: What you meant to say was 1891, not 1901?

A. That's the way I understood it, in 1891. I get those dates confused sometimes.

Mr. ODELL: We make the same general objection, Your Honor, that it relates to the Waters Pierce Oil Company in 1891, nine years prior to the organization of the present company, in the first place; in the second place, that the letter is wholly immaterial and irrelevant, and serves no useful purpose in the case, other than that of the possible prejudice to the defendant.
The COURT: The objection is overruled.
Mr. ODELL: We except.
Mr. BRADY (to the jury): Gentlemen, I will read this letter to you at this juncture. (Reads letter dated April 28, 1891, written by A. M. Finlay, Vice President, to H. A. Dennett, Cashier, subject, Eagle Refining Company, Dallas).
Mr. BRADY: There is a stamp here on the corner. (Reads stamped endorsement).

Q. Now, Mr. Clem, there was a contract entered into on the 5th day of October, 1894, between some parties in Ohio, yourself and the Waters Pierce Oil Company, for the purchase of the plant at Dallas, was there not?
A. Yes, sir.
Q. I notice a clause in there binding the Eagle Refining Company and all the other parties—persons—parties to the contract, prohibiting them, directly or indirectly, to "manufacture," etc.,
1240 down to and including "for a term of fifteen years," was read to the Jury.

Mr. ODELL: We object to the question and to the statement, because the contract is the best evidence of its contents.

The COURT: No question has been asked yet.

Q. I will ask you, Mr. Clem, whether or not that clause in the contract, as well as all other terms of the contract, have or have not been carried out?

Mr. ODELL: We object to his statement as to what is in the contract, for the purpose of predicating his statement, because the contract is the best evidence of its contents.

Mr. BRADY: I suggest that the contract has not only been read and admitted——

Judge PENN: We object to the question further, Your Honor, as leading, as calling for a conclusion or opinion of the witness. As to whether or not the contract has been carried out, depends upon the facts,—what was done under it; and we insist that the witness should be required to state the facts and not his conclusion.

Mr. BRADY: Well, I withdraw the question.

Q. Now, I will ask you Mr. Clem, what business, if any, the Eagle Refining Company did in Dallas and the surrounding territory, or in any of the territories or states, or the Republic of Mexico, during the time, fifteen years, beginning on the first day of October, 1894?

A. That is the old Eagle Refining Company that they bought out?

Q. Well, that included the Dallas plant?

A. They bought their Texas business.

Q. Now, I ask you what business that corporation did, or any of the individuals did, in that territory?

1241 A. Well, the Eagle Refining Company only lasted in business, I think, about six months, or a year after; I think they failed or went into the hands of a Receiver.

Q. That is, the Cleveland concern?

A. Yes, sir.

Q. Well, what did the Dallas Eagle Refining Company do, which was engaged in business and which you ran for four years; what business did that concern or any of the other individuals do in those States or in Texas, or in the Republic of Mexico, for fifteen years——?

Mr. ODELL: Now, we object to the question, because it calls for the conclusion and opinion of the witness, in the first place; and, in the second place, it is shown by the answer of the witness that this particular concern failed and went out of business some six or twelve months after the making of this contract, and if they failed it naturally follows that they could not do any business, because its corporate capacity ceased.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. The Eagle Refining Company at Dallas?

A. Yes, sir, that was owned by the Waters Pierce Oil Company and managed by me. Is that the one you have reference to?

Q. Yes, sir.

A. Well, that was continued up until December 31, 1903.
Q. December 31, 1903?
A. 1903, yes, sir.
Q. Now, I will ask you to state to the Jury whether or not that business was continued up to December 31, 1903, independent of, or as a part of the Waters Pierce Oil Company?
A. Why, it was a part of the Waters Pierce Oil Company, as a matter of course,—they owned it.
1242 Q. Then, did it perform any business or engage in any business independent of the Waters Pierce Oil Company?
A. What do you mean by "independent of"?
Q. I mean independent of. Did you, as an individual, do any business in this territory named in the contract, on your own account?
A. No, I didn't do any business.
Q. And the Eagle Refining Company at that time,—was it operated as part of the Waters Pierce Oil Company, not in name, but as a fact?
A. Yes, I understood; yes, sir.
Q. Was it operated as a part of the Waters Pierce Oil Company?
A. Yes, sir.
Q. Who paid the expenses of the management?
A. They paid the expenses.
Q. The Waters Pierce Oil Company?
A. Yes, sir.
Q. Who paid your salary?
A. The Waters Pierce Oil Company.
Q. Now, in what name did the Eagle Refining Company continue business until December 31, 1903, in the city of Dallas and surrounding territory?

Mr. ODELL: We object, Your Honor, to the question, for the reason that it assumes that the Eagle Refining Company continued in business, when the facts are shown to be that it was owned by the Waters Pierce Oil Company; they had bought it and this witness was an employé of the Waters Pierce Oil Company.
The COURT: The objection is overruled.
Mr. ODELL: We except.

Q. In what name? Now, answer so the Jury can understand you.
A. That business, you mean?
1243 Q. Yes, sir.
A. It ran in the name of the Eagle Refining Company, that is, all of our stationery and matter was of that nature.
Q. Well, how about the equipment, the warehouse and the tank wagons,—what name was on that?
A. Eagle Refining Company.
Q. Did you pay any taxes during that period of time,—up to December 31, 1903, for the Company?
A. Yes, I paid taxes.
Q. Do you know in whose name those taxes were paid up to and including 1903?

A. Why, the Eagle Refining Company.
Q. That is, upon the property of that company?
A. Yes.
Q. That was taken over by the Waters Pierce Oil Company?
A. Yes, sir.
Q. Did you make any reports to anybody in person, or any corporation after the Waters Pierce Oil Company took over your plant in Dallas?
A. After they taken over my plant in 1894?
Q. Yes, sir.
A. Yes, I made daily reports, and weekly reports, and monthly reports, and semi-annual reports, and all kinds of reports.
Q. Now, who did you make these reports to?
A. Well, my sales-report would go to J. P. Gruet, St. Louis.
Q. Now, the other reports?
A. My cash report would go to C. M. Adams, St. Louis; in fact, most of my reports went to J. P. Gruet.
Q. Well, who was J. P. Gruet, and who was C. M. Adams?
A. J. P. Gruet was at that time Secretary of the Waters Pierce Oil Company.
1244 Q. What connection, if any, did Mr. Adams have?
A. He was cashier.
Q. Have you any of those reports with you, or copies of them?
A. I have some copies of the last reports that I sent.
Q. Let me see them please.
A. It was unfinished business and I preserved those; they are the only ones I have, however.
Q. Were those reports for the period of time just before the close of your business, or not; you stated it was "unfinished business"?
A. It may be the last two or three days; it was the winding up; the round-up, you might say, of the Eagle Refining Company; the transfer to the Waters Pierce Oil Company, when they taken the business of the Eagle Refining Company over?
Q. There is one of December 29, 1903,—is that your signature there at the bottom, A. W. Clem?
A. Yes.
Q. There's one of the 31st?
A. That's the last day we did business.
Q. The last day of the company's business. There's one of December 31st——

Mr. ODELL: What year?
Mr. BRADY: All these are of the year 1903.

Q. There is one of December 31, 1903?
A. That is the last cash statement I made.
Q. There is a letter dated January 2nd. What year is that, Mr. Clem?
A. That is 1894.
Q. That is your remittance?
A. Well, yes, that was my remittance.

Q. Enclosing New York draft for the balance of account?
1245 A. Yes, my last remittance; we did no business after the 31st day of December.

Q. I will ask you to examine each of these and see if that is your signature at the bottom of each of those reports, or at the proper place?

A. Those are all my signatures.

Q. Are those correct impression copies of letters that you sent to those officers?

A. Yes, sir, statements—they are not letters.

Q. I mean documents?

A. Yes, sir.

Q. You sent them to the officers to whom they are directed?

A. Yes, sir.

Q. I will ask you where you got these from?

A. Where I got the blank forms, you mean?

Q. Where did you get these, I mean. (Exhibiting copies).

A. I taken them out of a private letter-book I have at home.

Q. What did you keep these copies for?

A. Well, that was the wind-up of the business and the final reports of the business, and in order to kinder protect myself, I kept them.

Q. These are in the nature of receipts?

A. Yes, they are in the nature of receipts.

Q. I notice you addressed some of those "Home Office". Mr. Clem, what kind of stationery did you use in corresponding with the Waters Pierce Oil Company?

A. Why, our stationery was all blank; of course, those were printed forms, but the "Home Office" is blank there, perhaps.

Q. Yes, I notice it just says "Home Office". Now, did you have any address stamped on the back of your envelopes, indi-
1246 cating from whom this correspondence was coming, that you sent to St. Louis?

A. On the envelope?

Q. Yes.

A. No, I used plain envelopes all the time.

Q. What character of envelopes would they use from the Home Office in transacting business with you?

A. Plain.

Q. Now, I will ask you, Mr. Clem, what became of the equipment and the property of the Eagle Refining Company plant at Dallas after the 31st day of December, 1903, when it closed—when business was closed up, as far as you were concerned?

A. It was transferred to the Waters Pierce Oil Company.

Q. What became of you in a business way?

A. Why, they were taking care of me.

Q. Well, where did they put you?

A. They gave me a position over in the office with them, as City Salesman, I believe. I didn't stay long enough to find out what my capacity was; I think, though, it was city salesman, but about the only thing I did was to do some collecting for them.

Q. How long did you stay in their employment?
A. Why, it taken me until the 5th of January to wind up the old Eagle business, and I went in and staid just about a month.
Q. What did you do?
A. What did I do?
Q. Yes, what did you do outside of that?
A. While I was in their employ?
Q. Yes.
A. Why, I didn't do much of anything; I was kinder laying around waiting for instructions.
Q. What finally came of your employment?
A. Why, I resigned,—sent in my resignation and quit.
1247 Q. I will ask you whether or not the drivers you had for your tank wagons went into the employ of the Waters Pierce Oil Company at Dallas?
A. Yes; there was only one driver at the time.
Q. Well, your warehouseman,—the man who was acting as both?
A. Well, at the time we closed, we had only one driver; he acted as both. He went in with them.
Q. What became of your bookkeeper?
A. Why, he was out of a position for two or three weeks, but they give him a position in the general office under Mr. Cahoon, as stock clerk, or something.
Q. Well, he went in the employ of this company on salary?
A. Yes. Now, I understand he went out at the time the Eagle went out, and they give him no employment right then, but they did take him in in about thirty days.
Q. Shortly afterwards?
A. Yes, sir; and the tank-wagon man went over there with me.
Q. How did the Eagle Refining Company come to close up at Dallas on December 31, 1903?
A. Well, Mr. Ackert and Mr. Pierce came through, I think in October; they came to Dallas, and——
Q. What Pierce do you refer to?
A. Well, that's the young Mr. Pierce.
Q. Arthur Clay Pierce?
A. Yes, Arthur Clay Pierce.
Q. And Mr. C. P. Ackert?
A. Yes, sir; and they phoned me to come up to the general office of the Waters Pierce Oil Company, and Mr. Ackert had a talk with me, and they told me they had decided to close up the Eagle Refining Company, because they were making no money, and decided to close up.
1248 Q. Did he give any other reason beside that?
A. I don't think he did. Said they were losing money, and I said I thought so myself; and they said they would give me a position in the office as city salesman, or something to that effect, and said, "You go ahead and wind up the business, preparatory to discontinuing on the first of January;" that was in October, I am pretty sure.

Q. Now, how were the wagons painted after that; do you know whether they were changed after that, or not?

A. Really, I don't know; I guess they was.

Q. Was the business run any more in the name of Eagle Refining Company after that?

A. No, sir.

Q. Any business done at all in that way?

A. None; no, sir.

Q. Mr. Clem, I will ask you how long that business had been a losing business at Dallas before they actually closed it down?

A. Well, as to being a losing business,—I didn't keep any tab on the profits and loss; that was kept in St. Louis.

Q. Well, you made daily reports by which they knew those facts?

A. Yes.

Q. I understood you a while ago to say that Mr. Ackert said to you they concluded to close this plant, because "It is losing money," and you said, "I think so too." On what did you base your statement?

A. Well, as to the amount of business they were doing, of course. We sold, may be, fourteen hundred dollars worth of oil a month, and we had an expense of some five hundred dollars a month; I couldn't see any profit in the business at that.

Q. How long had that condition lasted before Ackert concluded to close it down, and did close it down?

A. Well, it existed for some two or three years, anyway.

1249 Q. Had your expenses been about that ratio, or less or more, for those two or three years?

A. It had been about the same; may be, reduced some.

Q. I will ask you to state, Mr. Clem, whether or not in your reports to the Home Office at St. Louis, or any of the officers to whom you have made—you made reports of the loss of business, or the poor condition of business—what your reports were in that respect, and what reply you received from up there as to whether it was your business or their business.

A. Well, I would get to feeling awful blue, sitting around doing practically nothing, and I would kick, and I said I wanted to do a little more business, and they wrote back that as long as they were satisfied, I ought to be.

Q. Now, I will ask you what trades your business was peculiarly directing to securing during the time they operated the Eagle Refining Company after they purchased it; what trade you were directing your energies towards securing and holding?

A. Well, of course, at the time they bought the Eagle Refining Company out, I had quite a nice trade, and that trade I always tried to hold, but on account of competition and cut prices in the latter part of the year, why I lost a good deal of that trade.

Q. Now, I will ask you the question that I was particularly asking about,—without endeavoring to lead you,—was in reference to the Waters Pierce Oil Company trade and the trade you had previous to that change. Did you use the greater efforts to hold and secure their business, or the business you had had before you sold out?

A. Why, I didn't make any efforts to secure their business.

Q. That's the point I am getting at. You didn't make any efforts to secure their business, but hold your old trade?

A. Yes.

1250 Q. Do you remember when the Division Headquarters were established at Dallas?

A. Division headquarters?

Q. Yes, sir.

A. I think they have had a division headquarters there since I have—that is, what they called the North Texas Division—since I have known them.

Q. What I want to get at, is whether Mr. Grice was the division manager at that time?

A. He was the division manager up until 1898.

Q. Mr. Cahoon succeeded him, didn't he?

A. Mr. Cahoon succeeded him.

Q. I will return to the question I was asking you a while ago, in reference to why you were directing your attention to the old trade and didn't attempt to secure any of the Waters Pierce Oil Company trade. I will ask you why that was; upon what you proceeded there?

Mr. ODELL: That calls for a conclusion and opinion, Your Honor, and we object to it for that reason. We ask that he be required to state the fact.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. I will ask you upon what you proceeded in not attempting to get the Waters Pierce Oil Company's business?

A. Why, I assumed they were selling, and it was no use in my making an effort to sell them.

Q. Did you have any other reason?

A. Well, in fact, I was told—I was given to understand that wherever they were selling oil from their tank wagon, they would prefer for me not to.

Q. Now, by whom were you given to understand that as their wishes?

1251 A. By Mr. Pierce himself.

Q. Which Mr. Pierce?

A. Henry Clay Pierce. In our conversation at the time he bought us out, he told me, and also Mr. Finlay told me, wherever I was shipping oil out to points where they had an agent, or delivering oil, why for me to raise my prices, in order to cut me off, in order to save the local freight between those points. For instance, I had customers in Ada, New Mexico, at the time. It cost me six dollars a barrel. I say Ada, New Mexico; Pecos and all up there the rate would be high. Well, they had an agency at Pecos, a station there——

Q. A tank station?

A. Tank station, I presume, or nearby at least. Now, then, it is to their interest to have this agent at Pecos, or some nearby station, to sell this oil and save that local freight from Dallas out there, and I was instructed by Mr. Finlay to raise my prices or something like that, and try to drive this fellow off.

Q. Try to lose the trade you had out there?

A. Try to lose the trade; that's why.

Q. Now, did you carry out this policy in reference to holding the same old trade and not soliciting any of the Waters Pierce Oil Company's, up to the time the company went out of business in 1903?

A. Yes, sir, that was my policy.

Q. Continuously?

A. Yes, sir.

Q. Mr. Clem, I will ask you to give the Jury your judgment about the percentage of business that the Waters Pierce Oil Company did before it acquired your property in 1894, and what percentage of business it did after it acquired your business, with reference to the total oil business it did in that territory.

1252 Judge PENN: We object to that, Your Honor, because the witness has heretofore stated that he was unable to give the percentage done in that territory before they bought out the business.

The COURT: My recollection is that he said it was three or four per cent.

A. That's what I said.

Judge PENN: I understood him——

A. The remainder was the Waters Pierce Oil Company's. That is the way I meant it.

Q. Now, take the total amount after they purchased your business, up to the time they sold the Eagle Refining Company out,—what was the percentage of total after they acquired your plant,—take the first two years.

Judge PENN: We would like to cross-examine the witness to ascertain whether or not he is competent to answer this question.

(Examination by Judge PENN:)

Q. Well, take it after the Waters Pierce Oil Company——

Mr. BRADY: We object to that, Your Honor, this witness has already testified that the business done by the Waters Pierce Oil Company was all but three or four per cent., and the last question I asked him relates to the time since 1894, and we object to his going back, when the witness has twice answered that he knew the percentage.

The COURT: The objection is overruled.

Q. Isn't it a mere impression on your part, Mr. Clem, that you are undertaking to give, without knowledge of the facts?

A. That the per cent. of business we did was about four, you mean?

Q. Yes, sir.

1253 A. Well, now, I have some reason to believe that our business was somewhere about three per cent. in the entire State up to the time that the Waters Pierce Oil Company bought the Eagle out.

Q. Now, confine it to after the Waters Pierce Oil Company bought the business of the Eagle Refining Company—do you know what amount of oil was sold in Dallas?

A. No, I don't know.

Q. Have you any approximate idea of it?
A. No, sir; I didn't keep statistics.
Q. In Lancaster?
A. No.
Q. Terrell?
A. No.
Q. Do you know anything about the amount of oil sold in any town around Dallas?
A. No, I don't know anything about the number of gallons.
Q. Were you in any of the towns around there?
A. Was I?
Q. Yes, sir.
A. You mean my business?
Q. Yes, sir; outside of Dallas.
A. Yes, we did business in most all of the towns outside of Dallas.
Q. Were you there personally?
A. Why, I made trips on the road.
Q. Was that done occasionally or frequently?
A. Why, I wasn't on the road all the time.
Q. Do you know anything personally about what amount of oil came into Dallas and surrounding towns in carload shipments at that time, of your own knowledge?
A. Percentage, you mean?
Q. Carloads, shipped in by others than the Waters Pierce Oil Company and the Eagle Refining Company?
1254 A. No, I don't know how many carloads they shipped in. I knew we were taking about forty or fifty thousand gallons——
Q. Isn't it a fact, that you know nothing about what amount of oil was sold in that territory outside of the Waters Pierce Oil Company?
A. I know that there was no other company doing any business to amount to anything; may be sometimes a stray barrel from Houston——
Q. Do you know anything about the carload shipments that came to Dallas and the other territory?
A. There was no carloads coming in about that time.
Q. How do you know?
A. Why, I kept a pretty good tab on the trade, that is, my immediate territory. The fact is, I was doing no carload shipments close around at that time; I had three carloads going to Ardmore, Indian Territory.

Judge PENN: We object, Your Honor; the witness is not shown to have had a sufficient knowledge of the facts to have a——
The COURT: Mr. Clem, you answered a while ago that at the time the Waters Pierce Oil Company bought out the Eagle Refining Company, the Eagle Refining Company was doing three or four per cent. of the business in the Territory named, and the Waters Pierce Oil Company the balance. How did you know those facts?
A. Well, now, as to its being a fact, I couldn't say; I don't know

that I stated it to be a fact. It was my opinion, though, that we were doing four per cent. of the business.

The COURT: On what do you base that opinion?

A. On the amount of business that we done.

The COURT: On the amount of the business the Eagle Refining Company did?

A. Yes, sir, at the time that they bought it out.

1255 The COURT: What basis have you for making the comparison between what the Eagle Refining Company did, and what the Waters Pierce Oil Company did; in other words, what information have you as to what the Waters Pierce Oil Company did?

A. I can tell you about what I base my opinion on, if you want to know,—upon what Mr. Pierce told me himself in St. Louis, how much oil I had sold in the State of Texas?

Q. How much oil who had sold?

A. The Eagle Refining Company.

The COURT: Did he tell you how much the Eagle Refining Company sold?

A. He was talking about the business at the time the trade was made. "Now", he says, "you have sold a good deal of oil down there, compared to other companies"; and he went ahead and told me more about my business than I knew myself. He says, "You have sold 2-6/10 per cent. of all the oil sold in Texas in the last two years", or whatever it might be.

Mr. BRADY: What did he say with reference to George Rice, of Ohio?

A. I think he said George Rice, of Ohio, had sold 60/100 per cent., or something like that.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

(Mr. BRADY resumes examination:)

Q. Where did he call for that, in St. Louis?

A. That was in St. Louis the time the trade was made.

Q. He called for a tabulation of the data?

A. He wanted to know how much I had done and was doing now. "To prove this to you", he said, "I will show it to you", and he punched a bell and a boy came in, and he told the boy to get him the tabulations, and the boy brought in the tabulations, and he showed it to me. He had it figured out to a gnat's heel.

1256 Q. What Pierce was that?

A. Mr. H. C. Pierce himself.

Q. Mr. Henry Clay Pierce?

A. Yes, sir. Now, right there upon that statement from him, is what I based my three per cent. business in Dallas on.

Q. From 1894 to 1903 you were in the employ of the Waters Pierce Oil Company during all that time at Dallas, were you not?

A. Yes.

Q. Were you familiar with the business of the Waters Pierce Oil

Company as a competitor, not then as a competitor, but as a former competitor, in a general way?

A. Well, yes. I did my correspondence, however, with the Home Office, but I had no business relations with the local company.

Q. Well, you were an active oil business man at that time, in the employ of the Waters Pierce Oil Company?

A. Yes.

Q. Now, we don't ask you for accurate figures, Mr. Clem, but state whether or not you have a general knowledge of the conditions in Texas after 1894, and up to 1903, with reference to the oil business, the amount of competition going on, and the approximate amount of business done by the Waters Pierce Oil Company for the entire State.

A. You mean up to date, right up to date?

Q. Up to 1903,—during those nine years; if it varied any, why state it, if you know.

A. Well, after they bought the Eagle Refining Company out in 1904, in 1894, that cleaned up all the competition, you might say, in North Texas.

Q. For about what period of time?

A. Well, one year after that, or about that time, the Wyse Oil Company sprang up at Greenville,—an independent concern.

Q. Yes.

1257 A. And shortly after they had run at Greenville a while, they put in storage tanks at Dallas; then they scattered out pretty much over the State; at Austin, I believe; Ardmore, Indian Territory, and a lot of other towns,—that is, the Wyse Oil Company. I think it was about 1900 that the Southwestern Oil Company came into the field; may be, a little earlier; the Southwestern Oil Company,—they became quite active competitors of the Waters Pierce Oil Company.

Q. The Southwestern Oil Company?

A. Yes, sir. They erected storage tanks in almost every town of any size in the State.

Q. Do you have any information as to who the Southwestern was owned by?

A. Well, I can't say that I do. Their home office was in Houston, and they were quite active competitors of the Waters Pierce Oil Company for the last three years I was in business.

Q. That is, from 1900 to 1903?

A. Yes, sir; from 1900 to 1903.

Q. Now, what other competition was there—What other competition was there, Mr. Clem?

A. Well, the Richardson-Gay Oil Company sprang up,—a refinery at Corsicana. I believe that was about the first of 1893, they began business.

Q. 1903?

A. 1903,—a year before we quit business, perhaps.

Q. Where are they located,—at Corsicana?

A. Yes, sir, at Corsicana.

Q. Do they have any refinery of their own?

A. They don't own a refinery; they have it leased, but are operating a refinery, however, and are doing quite a nice business.

Q. I will ask you with reference to the Southwestern Oil
1258 Company; are they doing any business?

A. No, sir; they quit.

Q. Recently sold out?

A. Yes, sir.

Q. Do you know to whom they sold out?

A. I don't know they sold out to anybody; they just dismantled, that is, their property.

Q. How about their storage tanks in Dallas and other equipment there?

A. That has been standing idle for three or four months, but they sold it out about a month ago.

Q. But for several months they did no business?

A. Yes, they did no business.

Q. And how about the Ira O. Wyse Oil Company; are they any factors in the oil business?

A. None, practically; they have gone into the paint business.

Q. How about the Richardson-Gay; what is their experience, do you know?

A. Why, I don't know that I do; they seem to be doing business.

Q. Well, how much have they done recently?

A. I couldn't tell you how much; but they are doing quite a business.

Q. Now, take all the competition that you have mentioned during the nine years,—state to the Jury what percentage of the business the Waters Pierce Oil Company was doing in Texas during that time.

Judge PENN: I object, Your Honor, that the witness is not qualified to express an opinion on that; he certainly would not be able to express an opinion without he knew the total amount of oil sold in Texas and the amount sold by others than the Waters Pierce Oil Company; that would be necessary for him to arrive at a percentage, and he shows no such knowledge.

1259 The COURT: The objection is sustained.

Q. Well, I will ask you this about the Dallas and the North Texas business; You were in the employ of that company during those nine years. I will ask you if there was any decrease in their business?

A. North Texas and what?

Q. North Texas and around Dallas. You were in the employ of the Waters Pierce Oil Company, or the Central Texas Division, the division in which Dallas is located. I will ask you whether or not there was any decrease in the business, from your knowledge of the affairs of the business?

Judge PENN: We object to that, because the witness has testified that he was not in the general office of the Waters Pierce Oil Company there, and he is not shown to know what amount of business was done by the Waters Pierce Oil Company.

The COURT: The objection is overruled.

The COURT (to the witness): If you don't know, state you don't know.

A. Why, I don't know, of course.

Q. You remember the reorganization, Mr. Clem, of the Waters Pierce Oil Company in the year 1900?

A. Yes, sir.

Q. I will ask you to state to the Jury whether or not—what change in the manner of doing business there was, if any, on your part, conducting the Eagle Refining Company after the reorganization of the new company?

A. There was no change at all.

Q. How about the salary that you received, any change in that?

A. None at all.

Q. How about the character of stationery that you used, corresponding to and the correspondence from the St. Louis office?

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A. Why, it was the same. Now, I don't know; there may have been some blank reports sent out or something, about re-incorporating or something, but I don't think there was any change in it.

Q. Did you receive any information or instructions from St. Louis in reference to the reorganization, any information about that?

A. No, sir. Well, now I got a little alarmed at the decision in the Supreme Court——

Mr. ODELL: We object to any alarm he had.

The WITNESS: Anyway, I didn't open my door. I talked to my lawyer and he said, better not; and I wired to St. Louis to know what to do and I had a telegram from Mr. Johnson to go ahead.

Q. Which Johnson was that?

A. Mr. Johnson, Judge Johnson.

Q. John D. Johnson?

A. Yes, sir.

Q. Wired you to go ahead?

A. Yes, sir.

Q. Now, was there any change in the character of business that was done in reference to the trade, after 1900? I asked you the first general question if there was any change in the manner of doing business and you said there was no change. Then I asked you about your stationery, and now I ask you about the trade?

A. Why, there was none; in fact, I received no instructions.

Q. Was there any change in the method of doing business?

A. I didn't see any.

Q. Did you make the same old reports to the company at St. Louis?

A. Yes, sir.

Q. Now, where did you get your supplies of oil before they bought you out? I believe you answered that?

A. Yes, sir, I answered that.

Q. Now, after they bought you out——?

1261

A. Well, my oil would come from St. Louis, that is, I would make requisition on Mr. A. M. Finlay, of St. Louis.

Q. Well, how would it come?

A. He would ship it to me in tank cars.
Q. Whose tank cars, what character of cars?
A. The International Tank Cars from St. Louis.
Q. Any others?
A. I don't remember any others.
Q. Did you ever receive any W. P. O. tank cars?
A. I don't think I ever received one.
Q. You know what character of tank cars the Waters Pierce Oil Company was getting at Dallas, the company that was running in that name there?
A. They were getting W. P. O. cars, and Union Tank Line, too, I think.
Q. You know your source of supply with reference to the refinery; you know where it came from, the oil?
A. It was billed out from St. Louis.
Q. How about any change in your source of supply with reference to any refinery in Texas?
A. After the Corsicana refinery finally got in operation, we received our oil from Corsicana.
Q. About when was that, the year, you remember?
A. Really I don't remember right now; I can't tell; somewhere in '96 or '97.
Q. Something like two or three years after they bought you out?
A. Yes, sir.
Q. Do you know who the manager of that business was at Corsicana, who the person was?
A. We would get our bills of lading from A. Angus; he
1262 was agent of the Waters Pierce Oil Company.
Q. He was agent at Corsicana?
A. Yes, sir.
Q. Did you get your entire supply from the Corsicana refinery?
A. I think so, after that; I don't remember ever getting a tank car from anywhere else.
Q. What kind of tank cars was it shipped in?
A. U. T. L. tank cars.
Q. What do you mean by U. T. L.?
A. Union Tank Line.
Q. Union Tank Line cars?
A. Yes, sir.
Q. You have been in business for the last couple of years for yourself, haven't you?
A. Last three years.
Q. Mr. Clem, I will ask you to state to the jury whether or not in your oil experience, operating the Eagle Refining Company for them previous to their purchase or since you have been in the business yourself, alone or for yourself, you have met in competition the Security Oil Company or the Corsicana Oil Refining Company, in dealing with the trade?
A. I never met with them at all. Now, in reference to the Security Oil Company, I might say that they have quoted me prices that I asked for.

Q. Well, to whom did you send the request for prices?

A. Which request for prices—why, I wrote to the Security Company to quote me prices on oil. Of course, I didn't expect any favorable answer much.

Q. Well, when was that?

A. That was in '94.

Q. '94?

1263 A. 1904.

Q. That was after the Eagle Refining Company had gone out of business?

A. Yes, sir; I wrote the Security Oil Company, and they wrote me back that they didn't have any tank car equipments and couldn't wuote us prices. I wrote them I would furnish our own tank cars, and they didn't answer that letter. And last year I wrote them for prices on naphtha, and they quoted me about market price I was selling in Dallas.

Q. When was that?

A. Last year.

Q. You remember whether that was before this suit was filed or after this suit was filed?

A. I don't remember, no sir.

Q. You remember what price they quoted you with reference to the prevailing price at Dallas?

Judge PENN: We object to that as irrelevant and immaterial, the act of a third party not a party to this suit and not a party that this defendant is shown to have any connection with.

The COURT: The objection is overruled.

Judge PENN: We except.

Q. (Question read). On naphtha?

A. Well, they quoted me two cents above other refineries.

Q. Above the Corsicana refinery?

A. No, sir, at two cents above the Gulf Refinery, from whom I had been getting our naphtha.

Q. Did you buy any oil or naphtha or lubricating oils from the Security Oil Company?

A. No, sir, they were two cents above the market.

1264 Q. Mr. Clem, what knowledge have you in reference to the number of refineries doing business in Texas and the extent of the product that they turn out at their refineries?

A. I have no knowledge of the extent of their product.

Q. What is the capacity of these refineries that are operating in Texas, do you know?

A. I don't know the capacity of them.

Q. Do you know the comparative amount of oil that they turn out and the nature of refined oils in Texas outside of the Security and Corsicana refineries, their production and their capacity, compared to the capacity of the others?

A. No, sir, I couldn't answer that correctly.

Q. You have no information in the course of your business that you could give an answer fairly accurate on that?

A. No, sir, I don't think I have.

Mr. BRADY: Gentlemen, we offer in evidence all of these copies of letters and reports. (Hands counsel for defendant tissue paper press copies of letters and reports.

Judge PENN: If the Court please, we object to these reports, statements, etc., that are offered here, on the ground that they are irrelevant and immaterial and uselessly encumber the record in this case, the witness having testified that during this time he was in the employ of the Waters Pierce Oil Company he made reports to them of the business transacted by him, as an agent ordinarily would do, and these reports I can't see shed any light on any subject under investigation in this case. We think that the whole matter shown by these reports has been briefly stated by the witness, a shorthand rendition of the facts with reference to them, and we think this will unnecessarily encumber the record to that extent. It is rather a large record anyway.

1265 Mr. BRADY: We don't regard them, in view of Mr. Clem's testimony identifying them, and the statement of counsel that they have sent these reports to St. Louis, that there is any special importance to them, and we will, in the interest of economy and time, with-draw them ourselves.

Cross-examination.

(By Mr. ODELL:)

Q. Where was the home office of the Eagle Refining Company, Mr. Clem? At the date of the execution of this contract about which you have testified?

A. Cleveland, Ohio.

Q. You know when that company was organized?

A. No, sir, I don't.

Q. Well, how long had you been connected with them?

A. Well, I had been connected with them five years, four or five.

Q. Were you an officer of the company?

A. No, sir, I was no way connected with them; I mean connected; I was connected with them in a business way.

Q. In other words, you were an agent for them in the State of Texas?

A. Well, an agent you might say; I was really buying my oil from them and selling it, but running it in their name.

Q. That is to say, you were a marketing agent for them?

A. Yes, sir, I was a marketing agent for them.

Q. You did business in their name in Texas and bought all of your oil from them?

A. Yes, sir, that is correct.

Q. Now, in '94 you sold your marketing agency to the Waters Pierce Oil Company, didn't you?

A. Yes, sir.

Q. And went out of business?

A. Went out of business?

1266 Q. Yes.

A. Well, I continued business, you know.

Q. I understand.

A. Of course, I went out of business and went on a salary; I went out of my own business.

Q. After the execution of this contract you ceased to do business on your own account and entered the service of the Waters Pierce Oil Company on a salary, didn't you?

A. Yes, sir.

Q. And sold oil for the Waters Pierce Oil Company?

A. Yes, sir.

Q. You received your oil from them?

A. Yes, sir.

Q. And under instructions from them you sold the oil?

A. Yes, sir.

Q. As I understand your testimony, the name of the concern was continued; in other words, it was used for the Waters Pierce Oil Company?

A. Yes, sir, it was continued,—the name was, and the business.

Q. And instead of getting oil from Cleveland, Ohio, or sending requisitions there for oil, you made requisition direct on the Waters Pierce Oil Company, at St. Louis?

A. Yes, on Mr. A. M. Finlay.

Q. On Mr. A. M. Finlay; well, he was with the Waters Pierce Oil Company?

A. Yes, sir.

Q. They filled the requisition?

A. Yes, sir.

Q. I understand from your testimony that you didn't undertake to secure the trade of those people who were dealing with the Waters Pierce Oil Company's agency in Dallas?

1267 A. No, sir, I made no effort to secure that at all.

Q. You made an effort to hold the trade of your old customers?

A. Yes, sir, I tried to hold them.

Q. And you continued that for several years?

A. Yes, sir.

Q. Now, in 1903, I believe you say Mr. Ackert came down to see you?

A. Yes, sir.

Q. And suggested to you the business wasn't profitable?

A. Yes, sir.

Q. And arranged to close it out?

A. Yes, sir.

Q. You proceeded to do so?

A. Yes, sir.

Q. Mr. Ackert told you that when the business was closed he would give you employment as city salesman?

A. Yes, sir.

Q. And he did so?

A. Yes, sir.

Q. What did they pay you from '94 to 1903, Mr. Clem?

A. '94?

Q. From 1894 up to 1903, what was your salary?

A. Why, I had an original contract with them for three years at $250.00 a month: when that contract expired, I wrote to them voluntarily reducing my salary $500.00 a year. They wrote me back that they hadn't been thinking of closing the business, or something, but they had been thinking of reducing the expenses, and they, of course, accepted my reduction of $500.00 a year, and said they would just go ahead that way until they otherwise advised or something. I remained there on a salary of $2500.00 up until the 31st of December '93.

Q. 1903, you mean?

1268 A. Yes, sir, I get those mixed. They cut it down $500.00 as salesman.

Q. Now, under your original contract, made in 1894, you received $3000.00 a year for three years?

A. Yes, sir.

Q. After that you received $2500.00 a year until the 31st of December, 1903?

A. Yes, sir, that is correct.

Q. And when you accepted employment as city salesman, they reduced that to $2000.00 a year?

A. Yes, sir.

Q. You remained with them about a month?

A. Yes, sir.

Q. And left the service of the company?

A. Yes, sir.

Q. Now, you remember the suit against the Waters Pierce Oil Company in '97?

A. At Waco?

Q. Waco and Austin.

A. Yes, sir.

Q. You remember that?

A. Yes, sir.

Q. Did you testify at Austin?

A. When?

Q. In 1897.

A. No, I didn't come to Austin in '97.

Q. You- deposition was taken?

A. Well, my deposition, I think so, taken probably in Dallas.

Q. Well, I know, but it was taken for this case at Austin?

A. Yes, sir, I think so.

Q. You testified at Waco in 1896, didn't you, Mr. Clem, or '95?

1269 A. 1906, I think.

Q. Oh, you mean 1896, don't you?

A. I remember that time, yes, sir; I testified there.

Q. Very well, you testified fully about the Eagle Refining Company, didn't you?

A. Why, I think I answered such questions as were asked me; I don't think I went into details.

Q. You testified to your contract, didn't you?

A. I think so, yes, sir.

Q. Then, there has been no concealment of the relations between

the Waters Pierce Oil Company and the Eagle Refining Company, as evidenced in this contract, since your testimony at Waco in the Hathaway case, has there?

A. I don't think there has, no, sir.

Q. Of course, that was known; it was published in the newspapers?

A. Of course, and at the same time there are a great many people that don't read the newspapers, and I didn't make it my duty to go out and tell them of this.

Q. Well, everybody that did read the newspapers and wanted to know who owned your business there, they knew it, didn't they?

A. Yes, sir.

Q. Who you were carrying on that business for?

A. Yes, sir.

Q. Long prior to the organization of this present company?

A. Organization of 1900, you refer to?

Q. Yes.

A. Yes, sir; that was in 1896, I think.

Q. Four years before the organization of this company; and now, how long did you say that it was your opinion that your business at Dallas was being conducted at a loss?

A. That my business was being conducted at a loss?

1270 Q. Yes, business that you were conducting there?

A. Really, now, as to the business being conducted at a loss, I would assume that it was; I didn't know that the business was conducted at a loss. I had no way of telling what their oils cost them. I knew what the expenses there was. It may be that they could have sold 10,000 gallons of oil and made something, and, of course, I kept no record of profit and loss of the business.

Q. Then, as a matter of fact, you don't undertake to say the business was conducted at a loss, do you?

A. I wouldn't say it was; I didn't know.

Q. Now, you spoke of selling a carload of oil at Lancaster shortly before this contract was made, before you sold out to the Waters Pierce Oil Company?

A. That was three years before I sold; that was in '90, '91, may be, '90 or '91.

Q. Who did you sell to?

A. Sold that to a merchant by the name of Johnson, M. B. Johnson.

Q. You entered into a contract with M. B. Johnson, by which he would take a carload of oil and you wouldn't sell to any one else at Lancaster?

A. Well, that was his request; it wasn't a contract, don't know as it was a contract.

Q. Well, you acceded to it, didn't you?

A. Yes, sir; I went in there, and Mr. Johnson says——

Q. I don't want to argue the question with you, just answer the question.

Mr. BRADY: We submit the witness has a right to explain it now at this time; he was starting to give an explanation.

The COURT: Just answer the questions. Any explanations you desire to make, counsel can call for it.

1271 A. Well, there are only two or three merchants in the town, and he asked me not to sell to anybody else there.

Q. And you didn't do it?

A. No, sir; I just taken his order and went on to Waxahachie.

Q. Now, the Waters Pierce Oil Company they came in and sold to the other merchants that you wouldn't sell to; that is what you stated, isn't it?

A. Yes, sir, I suppose they did.

Q. Well, didn't you state so?

A. I know they did.

Q. You testified you knew they did?

A. Yes, sir, they sold it.

Q. Well, they couldn't get oil from you, could they?

A. They couldn't get oil at the price they were selling it for.

Q. Couldn't get it from you at all?

A. No, sir, because I didn't have a storage in Dallas.

Q. Well, you had an agreement with Mr. Johnson not to sell to anybody else there, didn't you?

A. I would have sold to other people in town, if I had a storage at Dallas.

Q. Well, you agreed not to do it?

A. Well, that was the understanding between Mr. Johnson and I, that he would take a carload of the oil.

Q. Then the other merchants couldn't get any unless they bought it from the Waters Pierce Oil Company, could they?

A. Well, I don't know where they could have bought it from, unless they bought it from Johnson.

Q. Yes, they either had to buy it from Johnson, or the Waters Pierce Oil Company?

A. They might have bought it from Johnson, because that was Johnson's idea in buying it, so he told me, that he was buy-

1272 ing it to supply the rest of them.

Q. He was buying it from you and going into the wholesale business to supply the other fellow, but in the meantime the Waters Pierce Oil Company they came in and they sold to the other people?

A. Well, they were selling them anyway, had been selling them all the time.

Q. I understand. Now, I want to go back to the Eagle Refining Company a minute. When this contract was made for the sale of your business to the Waters Pierce Oil Company, the Eagle Refining Company went out of business in about six months, didn't it?

A. I don't remember the time exactly; I know it went out of business; I think though in about six months, may be in the spring or summer of '95.

Q. They failed in business?

A. I understood that they failed.

Q. And the corporation ceased to exist?

A. Yes.

Q. And there was no such thing then in fact as the Eagle Refining Company after 1895, was there?

A. No, sir.

Q. You just simply retained the name of the Eagle Refining Company as a marketing agent for the Waters Pierce Oil Company, didn't you?

A. Yes, sir.

Q. Now, this cashier that you testified about this morning, what was his name?

A. Dennett.

Q. Where does he live?

A. Lived in Dallas; I don't know where he lives now. He was in Houston last I heard from him.

Q. When did you hear from him last?

A. Been a couple of months ago, I suppose, about that; I
1273 met him in Dallas, and he told me he was working in Houston,—was going to Houston that night.

Q. When did you get this letter from him?

A. I got that letter some time last winter, I think.

Q. Where was he at the time?

A. He first showed me that letter in my office.

Q. Last winter?

A. Yes, sir.

Q. What was his business at that time?

A. He was kinder of a car clerk at the T. & P.—at the M. K. & T.; he wasn't car clerk, but he was—anyway, some position, he walks on the track and takes the numbers of the cars.

Q. Call him "number grabber", don't they?

A. Number tramp or something, and my office is right on the M. K. & T., and he come up the track one cold morning and showed me that letter.

Q. What was he showing you the letter for?

A. Well, he thought it might interest me, and it would, because I could get up quite a collection of those, if I had kept things of that kind, and I don't know but what I might want to write a book some day.

Q. Did you ever write one?

A. No, sir; I am no author at all.

Q. Not trying to be a Lawson in the book business, are you?

A. No, sir.

Q. Is that the only letter he showed you?

A. He told me he had some other good ones, but I didn't insist on them. He give me that to frame, he said.

Q. And he had some others?

A. Yes, sir, he had others.

Q. He told you that he stole them from the company?
1274 A. He didn't tell me how he got them.

Q. You knew he stole them from his employer?

A. It is addressed to him, I think, personally,—Mr. H. A. Dennett; I think it is a personal letter to Mr. Dennett; that is the way I construed it.

Q. Didn't you construe it to be in the course of his employment?
A. Yes, sir, that is the meaning of it.
Q. Did he want you to pay him something for the letter?
A. Yes, sir; I gave him $2.50, I think, for the letter.
Q. Two dollars and a half?
A. Yes, sir.
Q. Well, what was the rate of the others that he had?
A. Well, he said that he had some other good ones.
Q. Have any price on them?
A. No, sir.
Q. He just wanted $2.50 for this?
A. Two and a half or five dollars; I don't remember what the price was.
Q. Two and a half or five dollars, you say?
A. Yes, sir, one or the other.
Q. Wasn't it five dollars.
A. I don't know if you aren't about right; believe it was five dollars I paid him for it.
Q. Five dollars instead or two and a half?
A. I wanted it for my files.
Q. He didn't name any price for the others?
A. Oh, I don't know about that.
Q. Well now, Mr. Clem, didn't he put a price on the others?
A. No, he told me he had a lot of other letters.
Q. Would like to sell them?
A. Said he had some other good ones or something; I never told him I wanted to look over them at all.
1275 Q. And he never brought them to you?
A. No, sir.
Q. Never did show you a one of them?
A. I don't think he ever did, no, sir; he walked by my office every morning taking his car numbers and he happened to have the letter in his pocket; in fact, I overtaken him on the road and he pulled this letter out and says, "Here's a rich thing; you ought to have this to frame"; and I didn't pay much attention to it, but a day or two afterwards he dropped in, and I asked him for the letter, and he says, "It is worth money to you", and finally I bought it from him. I think he owed me something anyway; I think he owed me $2.50 borrowed money, and I gave him $2.50 in cash.
Q. And canceled the debt?
A. Yes, sir, and he owes me something yet; I guess I will take the rest of the letters.
Q. Take the rest of the debt out in letters?
A. Yes, sir.
Q. You say he dropped into your office on a cold morning?
A. Yes, sir.
Q. Didn't you state a minute ago that you caught up with him out grabbing the numbers?
A. Well, I did overtake him on the road and he showed me this letter; I don't think he dropped in that day, but he would drop in every morning and get warm; we would have a good fire in my

office by his trail, and he would drop in, and I believe about the second morning after he showed me this letter he dropped in again, and there was someone in the office, and I asked him, I says, "Let's see that letter".

Q. Did you read it when he showed it to you?

A. I think so, yes, sir.

Q. Out on the track?

A. I think I read it.

1276 Q. Did you suppose he was carrying it around in his pocket when you asked him to let you see it again when he dropped in?

A. Well, he had it in his pocket.

Q. Did he tell you he had it, or did you just suppose he had it?

A. Well, he dropped in to get warm, and there was another man interested with me in the business and I said, "Dennett, have you got that letter with you," I says, "here is another man wants to read it."

Q. Who was the other man interested?

A. His name was Brown.

Q. Interested in what business?

A. Interested in my business, Clem Oil Company. And he showed Mr. Brown and I the letter, but I had seen the letter the morning—a day or two or week before in Dennett's hands when I was walking with him up the track.

Q. Who did you show the letter to first?

A. I don't know; I taken it home and put it in a little tin box there where I keep a lot of important letters, etc.; don't know as I showed it to anyone.

Q. Well, did you ever show it to any one?

A. Yes, sir, I have shown it.

Q. Well, who to first?

A. I don't know who first; one or two of my oil friends, Oriental Oil Company, have read it, that is, Smith; I remember showing it to him?

Q. Anyone else?

A. I may have shown it to a dozen people; I don't think, though, I have.

Q. When did you come to town, Mr. Clem,—Austin?

A. I dropped in here this morning about eight o'clock, I think.

Q. First time you have been here during the trial of this case?

1277 A. Yes, sir.

Q. Who requested you to come?

A. Mr. Lightfoot; Mr. Lightfoot requested me, that is, he asked me if I would come without being brought down here.

Q. You knew you couldn't be brought here in a civil case, didn't you?

A. No, I didn't.

Q. You didn't know that?

A. No, that is news to me. I thought I would have to come if they summoned me.

Q. And you live in Dallas?

A. Yes, sir. I don't know much about the law and lawyers, but he asked me if I would come.

Q. How much you being paid?

A. Me?

Q. Yes, you.

A. I haven't got nothing yet.

Q. How much you going to get?

A. I think he ought to give me my car fare.

Q. That all?

A. Well, I believe I get a dollar a day here as a witness.

Q. That is all you are going to get?

A. Yes, sir, that is all; I ain't going to get another penny, and I don't know whether I will get that or not.

Q. Now, in carrying on the business of this company at Dallas you had letter impression books, didn't you?

A. Yes, sir.

Q. You kept in those books your requisitions that you sent to the company?

A. Yes, sir.

Q. What did you tear these leaves out of that book for
1278 when you left the service of this company; they had paid you everything they owed you, hadn't they?

A. Well, I will tell you; I didn't tear them out of their book. If you will look at that, that is the reports that the Eagle Refining Company made to the home office. For instance, on December 31st, there is a transfer of the iron barrels. I was responsible for them, and we were bound by it and I kept those copies in case of anything that might come up afterwards.

Q. You had a receipt for what property you turned over, didn't you?

A. Receipts may have come later; I don't know about that; I don't remember.

Q. Didn't you check the property over to the man who received them?

A. Well, I checked it, but there is the inventory of the iron barrels.

Q. Didn't you get a receipt for that property when you turned it over?

A. I may, but I don't know whether I have or not; if I have, it isn't itemized like this is.

Q. Now, you tore those pages out of that copy book, didn't you?

A. I cut these out of the book Sunday morning; I have got that book at home. It is a personal book of my own, you might say.

Q. You say that it is a personal book of yours?

A. There is some of the company business in it, but half of it is personal letters of my own.

Q. Why, the company bought the book, didn't they?

A. I don't know about that.

Q. Don't you know you charged it up to them?

A. No, I don't think that I did; I think that is a book of my own.

Q. Why didn't you copy those reports in the book that you ordinarily copied them in?

A. Because I wanted to keep all these reports, because the
1279 last reports that I made acted as a voucher and receipt against anything that might come up.

Q. When you left the service of this company you deliberately kept this book for the purpose of some future use, isn't that the truth?

A. No, sir, it is not, except as stated,—to protect me against anything that might come up.

Q. What were you expecting to come up?

A. Well, if you will notice on that, you will notice about two or three hundred iron barrels that I am responsible for; that is itemized; it gives the number of the barrel, the date it went, who owned it at that time; now, something might come up in future years about that, maybe two or three years. Now, turn here, this barrel, No. 202, I have my records here and can tell who had that barrel.

Q. You can tell what became of iron barrel No. 202, which you have a receipt for?

A. Yes, sir.

Q. Now, you still say that this book was a book in which you recorded your personal business as distinguished from the company's?

A. Yes, sir, part of it is, and in fact, half of it or more.

Q. There isn't a letter in the book that you didn't write to the company, is there?

A. Not a letter in that book?

Q. Yes.

A. Yes, sir; there is only one or two letters in there to the company.

Q. You didn't have any other business except the company's business, did you?

A. I had some personal letters; I correspond with other people sometime outside of the company.

Q. And keep copies of your letters?

A. Yes, sir.

1280 Q. Put them in the same book with the company's letters?

A. I had put these in my book, not the company's book; put them in my book; I consider that personal business, those last reports, because when the Eagle Refining Company taken its flight all business relations or correspondence ceased between the home office and the A. W. Clem Company. Now, I preserved those there in case the auditor should come around and say that here is seven or eight hundred dollars which you ought to have on June 30th; what have you done with it. I have got those to show I sent it in. It is the only pay records that I kept there because I was responsible to the company for everything, and in that, if you will examine it, you will find it is a general inventory of everything turned over, and I kept it to protect myself.

Q. Well, if you kept it for that purpose, what did you cut it out and bring it down here for?

A. Well, I knew I would be questioned about the character of reports I made up there and the question has been asked me what character of reports we made to St. Louis.

Q. You knew what was going to be asked you?

A. Well, I supposed it would be; it has been asked me.

Q. Why didn't you bring the book and not mutilate it?

A. The book is too large to carry in my pocket, and I didn't think it amounted to much, and in fact as evidence it hasn't, as far as that is concerned. That is why, and now if you want to know the character of reports that we made to the home office, there they are right there, every one of them.

Q. Well, you just made reports of the business, did you?

A. Cash sales and cash sales reports.

Q. I understood you to say this morning that you were entitled to a profit of three cents a gallon on your oil?

A. Entitled to it?

Q. Yes, that is the very language you used.

1281 A. I may have said that a man can't market oil for less than three cents unless he does an enormous business.

Q. Didn't you say you were entitled to a profit of three cents a gallon?

A. Yes, I think I did. I ought to have that.

Q. And you got mad at the Waters Pierce Oil Company because you were not getting it, didn't you?

A. Because I wasn't doing what?

Q. Not getting three cents a gallon profit.

A. You mean originally, way back yonder?

Q. Yes, that is what you first got mad about?

A. No, I didn't get mad at them about that; of course, their manner of competition made me hot, or whatever you want to call it; don't know that I got mad.

Q. Just got hot?

A. Well, whenever you go into a town and sell a carload of oil at their prices and come back and find the merchants all kicking at the price and backing out, and they are retailing five cents less than you are selling it, it is enough to make a man feel hot.

Q. Well, you did have that kind of feeling toward them?

A. I guess I did, of course, in those days.

Q. You have sorter kept it up, haven't you?

A. I don't know; I left the Waters Pierce Oil Company with a kind feeling toward them, when I quit them; I sent my resignation to them and left them with the intention of being good.

Q. Being good?

A. And I have been pretty good to them.

Q. You still have a kind feeling toward them, have you?

A. Kind feeling toward them?

Q. Yes.

A. I don't know about that. I sympathize with them when they get into trouble, of course.

1282 Q. You went around helping work this case up, didn't you?

A. This case here?

Q. Yes.

A. I don't think I did.

Q. You went to see a lawyer in Dallas, didn't you, Etheridge?

A. No, sir.

Q. You didn't go to see him?
A. No, sir.
Q. Certain of that?
A. No, sir, I didn't.
Q. Who was it, then, that you went to see, which lawyer?
A. I didn't go to see any lawyer about working up this suit against the Waters Pierce Oil Company. When I resigned my position with the Waters Pierce Oil Company and left there, I left with a kind feeling towards all of them.
Q. Didn't you go to see Etheridge and tell him what you knew about this case?
A. You are thinking about the Bailey business.
Q. I am asking about what you told him about this Waters Pierce Oil Company business?
A. Well, Etheridge told them about me in a speech over there at Waxahachie, that is all; only he didn't know what he was talking about, because he used my name in a way that there was evidently a mistake.
Q. Well, you talked to him?
A. Well, he came to see me and had an interview with me.
Q. Did you show him any letter?
A. I was just thinking; I don't remember showing him any letters. Now, let's see——
Q. Did you show him this Dennett letter?
A. No, I didn't show him the Dennett letter; I don't think I did; there was some newspaper clippings I showed Etheridge.
1283 Q. You told us why you made a copy of these reports. Now, what did you bring that letter along for?
A. Why, Mr. Lightfoot had that letter for some time.
Q. When did you give it to him?
A. I think I mailed it to him some time ago.
Q. About how long ago?
A. Why, some two or three months ago.
Q. What did you mail it to him for?
A. Why, Mr. Lightfoot was up there to see me and he asked me for information, and I gave him what I knew.
Q. I thought you said you hadn't had any interest in this case, but had a very kind feeling toward the company and sympathized with it.
A. I said I left them with a kind feeling.
Q. Didn't you say you still had it and sympathized with it? Well, now the truth of the matter is, you gave him that letter, hoping it would have some effect in this case, didn't you?
A. Well, I guess I did, yes.
Q. All right; how many oil companies you say are doing business in Dallas now?
A. Why, there is about four or five.
Q. What are they?
A. Independent Oil Company.
Q. How long has it been there?

A. About a month, I think; that is lubricating business only. Ira O. Wyse Oil Company.

Q. How long has it been in business there?

A. For seven or eight years, may be ten years; ten years, I guess. They are not doing much in their refined or lubricating oils; they sell paint mostly.

Q. What other company?

A. Oriental Oil Company.

Q. How long have they been in business there?

1284 A. They have been in business about five years.

Q. They are lubricating and refined oils?

A. They don't do much refined oil business in the city.

Q. They lubricate a good deal?

A. They lubricate a good deal, yes; they do a good lubricating business, and refined oils, they are doing quite a refined oil business outside of the city, but they run no wagons.

Q. Now, the next company?

A. Let's see; why the Clem Oil Company you know; they are doing some business there yet.

Q. How long have you been in business there?

A. In February, 1894, I believe we went in business,—1904, I mean; I get those things mixed, confused.

Q. Now, let's see, there is the Ira O. Wyse Oil Company, Independent Oil Company; the Clem Oil Company, and the Oriental Oil Company; four companies that have been operating in Dallas independently of the Waters Pierce Oil Company, and most of them for several years?

Mr. ALLEN: We object to that; he hasn't said they operate independently of the Waters Pierce Oil Company. No witness has testified they are operating independently of the Waters Pierce Oil Company. They may run under an alias, just like these others.

The COURT: The attorney may ask the question.

Q. They are operating independently, aren't they?

A. Of course, I only have an opinion.

Q. Well, that is your opinion?

Mr. BRADY: We object to his stating his opinion.

A. So far as I am concerned, I know I am independent; but the others,—they would have to speak for themselves.

Q. Most of your testimony has been an opinion, hasn't it?

A. Well, I think most of my opinions have been ruled out.

1285 Q. Well, who is president of the Oriental Oil Company?

A. Man by the name of Coppish.

Q. He lives in Dallas?

A. Yes, sir, in the drug business there.

Q. Richardson & Gay, don't they do business in Dallas?

A. We buy quite a lot of oil from Richardson & Gay in tank cars; they are doing no business in Dallas; they do some business there, some lubricating business.

Q. The Gulf Refining Company, they do business there, don't they?

A. Yes, sir.
Q. Haven't they a plant there?
A. They have no plant in Dallas.
Q. The Richardson-Gay people have?
A. No, sir; not in Dallas.
Q. How many of those companies have plants there?
A. All of those that I have mentioned have warehouses and storage tanks; that is what you have reference to when you say plants?
Q. Yes; have tank wagons?
A. We are the only ones that are operating tank wagons.
Q. How many tank wagons have you?
A. We have two and sometimes three; sometimes run three.
Q. The Southwestern Oil Company operated there for a long time didn't it?
A. Yes, sir, they operated there up until about the first of the year, that is, they closed down about the first.
Q. Well, they operated there for several years in Dallas, didn't they?
A. Yes, sir, they operated there for several years.
Q. Where was your office in Dallas from 1900 up until December, 1903, Mr. Clem?
A. From 1900?
Q. Yes, sir.
A. To 1903?
Q. Yes.
1286 A. Why, I was in the south part of town, South Dallas.
Q. Have any sign?
A. Yes, we had a sign.
Q. What was it?
A. Part of the time,—well all of the time.
Q. What was it?
A. "A. W. Clem, Agent of the Waters Pierce Oil Company."

Redirect examination.

(By Mr. BRADY:)

Q. You say you had a sign, Mr. Clem?
A. Yes, sir.
Q. Just tell the Jury how big that sign was?
A. Why, it was about six by thirty, I guess; two and a half long, about that long (indicating), six inches wide, six or eight inches.
Q. And two and a half or three feet long?
A. Yes, sir.
Q. Where did you hang that sign?
A. Well, that was put——
Q. Where was it hung with reference to the creek?
A. That was first put on the back of the office and somebody knocked it down or it got tore away some way another, and then it was put up back of the warehouse.
Q. Now, back of the office where it was first hung, was there any public street running along there?

A. No, there was no public street there; I believe there was a railroad.

Q. Railroad track?

A. Yes, sir.

Q. That was over in South Dallas?

A. Yes, sir.

Q. Near that creek that you spoke about this morning?

A. Yes, sir.

1287 Q. On your direct examination; now, in that isolated place; don't the back of the warehouse and office front on that creek?

A. The back of it backs down into a hollow, yes.

Q. And you hung that sign back there after it was knocked down from the front office, you hung it back there on the creek?

A. Yes, sir.

Q. Two and a half inches wide and two and a half feet long or three feet long?

A. Yes, sir. There is a street car there that this sign could have been read from.

Q. How far is that?

A. About a block.

Q. How large are those letters on that sign; can you designate on that paper about the size of them? Fold it so as to make it about the size. (Handing witness blank sheet of paper, which witness folds.)

A. The "A. W. Clem" was in two inch letters, I should guess.

Q. How large was the "Agent W. P. O."?

A. That was about one inch letters.

Q. Very nicely ornamented?

A. Yes, sir.

Q. The "A. W. Clem" was in two inch letters and the "Agent Waters Pierce Oil Company" about an inch?

A. Yes, sir.

Q. And that street car ran a block off?

A. It was hardly a block; half a block, may be three fourths of a block; they could see the "A. W. Clem" I think, from the car all right; I don't know about the other.

Q. You were asked the question, Mr. Clem, whether you helped get up this case. I will ask you whether or not you testified with reference to this contract with the Waters Pierce Oil Company in '97, nine years before this suit was filed?

1288 A. Yes, sir, I testified; I know they swore me all the way from Austin to Washington. I hope they will get through with it.

Q. You talked to Mr. Lightfoot when he came to Dallas to see you about this matter?

A. Yes, sir.

Q. I will ask you whether you hunted Mr. Lightfoot up, or he hunted you up, about this matter?

A. He hunted me up.

Q. You were question- about your expenses down here and about what interest you had in this case. You stated you hoped to get

your traveling expenses back. I will ask you in addition to that, to state whether or not you have been promised anything, directly or indirectly in connection with this case?

A. No, sir; nothing whatever.

Q. In the result of this suit you have any direct or indirect interest in a money way?

A. No, sir, I have not.

Q. Now, you stated there were one or two company letters in that copy book that you have there at home, letters of the Waters Pierce Oil Company. Have you ever used that book in connection with this case at all, except to bring those copies down here?

A. No, sir; I have not.

Recross examination.

(By Mr. ODELL:)

Q. This sign you spoke of, Mr. Clem, who did you get instructions from about that sign?

A. That was sent me by instructions from St. Louis. Mr. H. C. Pierce sent it; wrote me a letter himself.

Q. You remember the date of the letter?

A. I do not, no, sir; I turned over all my letters and everything to the company when I quit business.

Q. Wrote you a letter to put the sign up?

A. Yes, sir.

Q. And you did it?

A. Yes, sir.

1289 C. W. CAHOON, a witness for the State, testified as follows:

Examination by Mr. BRADY:

Q. Your name is C. W. Cahoon?

A. Yes, sir.

Q. Where do you reside, Mr. Cahoon?

A. Dallas, Texas.

Q. What position, if any, do you occupy with the Waters Pierce Oil Company?

A. Manager of the Central Texas Division.

Q. How long have you been employed by the Company in that capacity?

A. Since January 1, 1903, I think.

Q. January 1, 1903?

A. In that capacity, yes, sir.

Q. How long have you been with the company altogether?

A. About nineteen years.

Q. Previous to 1903, what positions did you occupy, and where?

A. I entered the service of the company in 1888 as a stenographer, at Galveston, and remained there a year; and then spent four years in Houston as agent. From there I was transferred to Dallas and held the position of chief clerk, traveling salesman, assistant manager, and manager.

Q. And since 1903 you have been occupying the position of manager of the Division?

A. That is my recollection, yes sir.

Q. How long have you been at the Dallas office?

A. Since April '93, as I recollect it.

Q. April, 1893?

A. Yes sir.

Q. What territory does the Central Texas Division extend through?

A. North, Central and a great part of West Texas.

1290 Q. No regular uniform line dividing that Division from the others?

A. Hardly, no sir; it would be rather difficult to——

Q. Well, what other Divisions are there in Texas?

A. South Texas Division, headquarters at Houston.

Q. There are now only two Divisions in the State?

A. Yes sir.

Q. The Central and South Texas Divisions?

A. Yes, sir. I would state that there is a small part of East Texas that is handled through Shreveport.

Q. That is known as the Louisiana and East Texas Division, isn't it?

A. Yes sir.

Q. Mr. Littlefield the manager?

A. He was, yes sir.

Q. Is he now?

A. No sir.

Q. How long since he ceased to be manager of the Louisiana and East Texas Division?

A. I don't know the date.

Q. He is present in the city now, isn't he?

A. Yes sir.

Q. I will ask you, Mr. *Clem*, to what extent you gather statistics of information for the home office in St. Louis, of your own and competitors' business?

A. I don't understand what you mean.

Q. I say to what extent do you gather statistics of the business of your own company and competing companies for the use of the St. Louis office?

A. I keep an absolutely correct record of our own sales, and as much information as our agents and salesmen provide me with in regard to the others.

1291 Q. How often do you report and in what manner do you report your own business to the St. Louis office?

A. We report daily.

Q. Daily sales?

A. No, we report our sales monthly.

Q. Well, what character of daily reports do you make to the St. Louis office?

A. At the present time, a daily cash report; there are some other minor reports that I don't recall.

Q. Now, to what extent do your agents and employés, subordi-

nates, I think you use the term, furnish you with information of competitive companies, competitive shipments or competitive receipts, in your territory?

A. They furnish me with all the information they gather as they cover their territory.

Q. Is that a frequent matter or infrequent, daily or otherwise?

A. Receive daily reports from all of them.

Q. In reference to competitive shipments?

A. Not necessarily; principally in regard to their own sales.

Q. Well, I mean with reference to competitive shipments, how often do you receive information in regard to competitive sales?

A. The information in regard to competitive sales are mailed inside of their reports; that is a secondary matter, however.

Q. Well, whatever information you require, is acquired by them; as they acquire it, then send it or report it to you?

A. Yes, sir; they report it on their daily reports as they acquire it.

Q. How often do you send in a report to the Company of the competitive sales, shipments, and conditions over your territory with reference to competition?

1292 A. We send a monthly report.

Q. To whom do you send that?

A. C. P. Ackert, General Manager.

Q. How often does he reply to them, to your report and suggestions made in that report?

A. Sometimes he does, and sometimes not.

Q. Do you recall any instances since 1903 where you have made a monthly report, competitive report, and have not received any advice or answer from the St. Louis office?

A. Yes sir.

Q. How often?

A. Two thirds of the reports are not replied to.

Q. Where do you copy those reports, copies of them, or do you keep copies?

A. In my books.

Q. Are the originals returned to you or left at the St. Louis office, do you know?

A. They are not returned to me.

Q. Mr. Cahoon, what is the source of the supply principally of the Waters Pierce Oil Company in its North Texas Division?

A. In Central Texas Division?

Q. Yes, I mean Central Texas Division; I call it North Texas.

A. Corsicana, at the present time.

Q. How long has Corsicana been your principal supply-center?

A. Well, up to within two months ago, Corsicana was not our principal supply.

Q. Well, previous to two months ago, where was your principal supply?

A. Neodesha.

Q. Where is that?

A. Kansas.

1293 Q. Neodesha, Kansas?

A. Yes sir.

Q. Do you know what company or concern owns the Neodesha refinery?

A. No sir.

Q. What is your information in the course of your dealings, your business at Dallas, Texas?

A. I have no information in regard to it.

Q. You mean to say that in the conduct of your business at Dallas, you don't know who is the owner?

A. I know absolutely nothing about it.

Q. From your correspondence and the details of your business, you have not gathered any information as to who owns the Neodesha, Kansas, refinery?

A. I never passed a letter with the Neodesha refinery.

Q. Well, how do you come to be getting your shipments from Neodesha instead of some other point in the United States?

A. I presume because the orders are placed there.

Q. Where do you place your requisitions for oil?

A. The St. Louis office.

Q. Upon whom are the requisitions made?

A. Waters Pierce Oil Company.

Q. What officer?

A. They are forwarded to A. M. Finlay, Vice President.

Q. Who advises you, that is to say, what officer advises you of the source of supply on your orders and the routing of the shipments?

A. Why, I don't know that I get any advice as to the routing until the shipment is made.

Q. Well, I mean after it is made,—what officer of the Company advises you of the routing of the shipments?

1294 A. I don't recall; I haven't seen any of those advice cards in so long, I don't remember who they come from now.

Q. What other sources of supply do you have besides Neodesha, or did you have previous to two months ago?

A. Chaison, Texas.

Q. That is the Security Oil Company's refinery?

A. Yes, sir.

Q. From which of the two refineries, Neodesha and the Security Oil Company, do you receive, did you receive the greater amount of oils?

A. I say Security; we received possibly as much from the Gulf Refining Company as we did from the Security Oil Company at Beaumont.

Q. How?

A. I say we received probably as much or more supply from the Gulf Refining Company than we did from the Security Company.

Q. When is the last oil you received from the Gulf Refining Company in your division?

A. I don't recall.

Q. Well, about how long ago?

A. I wouldn't know; the shipments are made by a local representative, and I don't know.

Q. Upon requisitions to St. Louis?
A. Yes sir.
Q. Well, did you make your requisitions direct to St. Louis for oil that came from the Security Oil Company?
A. Yes sir.
Q. And likewise the Neodesha refinery?
A. Yes sir.

Q. You can't give us approximately the last date when you
1295 received any oil for use in your Division from the Gulf Refining Company?

A. I wouldn't know the date; I wouldn't know who they came from, because the shipments are made by a local representative of the company.
Q. Well, I understand you to say that a few months ago you got as much oil perhaps from the Gulf Refining Company as you did from the Security Oil Company?
A. That is my understanding, sir.
Q. Well, at what time do you refer to?
A. The present time.
Q. Up to within a couple of months ago?
A. Well up to the present time.

Thereupon Court adjourned until 2.30 p. m.

Court opened at 2.30 p. m.

A. W. CAHOON on the witness-stand.

Direct Examination resumed.

By Mr. BRADY:

Q. Mr. Cahoon, what position did you say you occupied just previous to becoming Division Manager?
A. Assistant Manager.
Q. How long had you been Assistant Manager.
A. Why, I should say two years.
Q. About two years?

A. Two or three years; as a matter of fact, I was assistant
1296 to the Manager from the time I went to Dallas.

Q. Then your title was either Assistant Manager or Division Manager during all of the time since the reorganization of the Company?
A. Well, I rather think I was given the title of Assistant Manager in 1901.
Q. 1901?
A. I would not be sure about that, however; prior to that I was Assistant, without a title.
Q. You were in effect Assistant to the Manager?
A. Yes, sir.
Q. Now, Mr. Cahoon, do you know the parties in charge of and managing the Corsicana refinery?
A. Yes sir.

Q. How long has that refinery been there in Corsicana, do you know?

A. I could not say; I think probably six years or seven years—six or seven years.

Q. Well, it was about 1901 when it was established, wasn't it?

A. That's my recollection; I am not sure about it, however.

Q. Who is the superintendent and active manager of the concern?

A. Mr. Brown.

Q. Mr. Brown?

A. Yes sir.

Q. Who is the—what position or employment has Mr. Angus with that company?

A. He is not connected with that company.

Q. Mr. A. Angus, I refer to.

A. He is not connected with the refinery.

Q. Is he the local agent of the Waters Pierce Oil Company at Corsicana?

A. Yes sir.

1297 Q. And he is in no wise connected with the refinery, so far as you know?

A. No sir, I know he isn't.

Q. Has he ever been connected with the Corsicana refinery that you know of?

A. Not to my knowledge, no sir.

Q. Is there another Mr. Angus at Corsicana that you know of?

A. No sir, not that I know of.

Q. How often do you have occasion, or have you had occasion, to visit Corsicana on business with the local agent and the Corsicana refinery, or either, since the reorganization of the Company?

A. Why, an average of once every sixty or ninety days.

Q. Upon what business would you go there, as nearly as you can state it?

A. With who?

Q. With the local agent and also with the Corsicana refinery people?

A. With the local agent I would go over the situation generally. With the refinery company I have had very little occasion to take up matters. I have called on them a few times with reference to the grades of oil they were giving us, and so forth.

Q. Now, I will ask you whether or not you have taken a greater amount of oil from the Corsicana refinery within the last year than you have in previous years since the reorganization of the company?

A. We have not; no, sir.

Q. About the same percentage?

A. No, we haven't taken as much during the past year as we have previous years.

Q. You have not?

1298 A. No sir.

Q. To what is that fact due, Mr. Cahoon?

A. Inability to give us the quantity.

Q. It's on account of the fact that they have not had the output?

A. Of the grade that we wanted.

Q. Now, during all that time I wish you would state to the jury what percentage of the output and production of the Corsicana refinery has the Waters Pierce Oil Company taken?

A. I don't know.

Q. Taken it all, hasn't it?

A. I don't know that.

Q. Well, what is your judgment, from the amount of oil that you handle in your Division and the amount of oil that is taken from that refinery by the South Texas Division, of the production of the refinery as known to you?—what do you think is the amount produced?

Mr. ODELL: We object, because it calls for a conclusion of the witness about it, Your Honor. Of course, if he has facts within his knowledge with reference to it, or if he knows what the output was, he may say. It is just a straight opinion and conclusion that is sought from the witness.

The COURT: The objection that it calls for the opinion of the witness is sustained.

Q. Mr. Cahoon, what knowledge have you had, or occasion to find out and inform yourself about the production of the Corsicana refinery since you have been Assistant Manager and Manager?

A. Only so far as one grade is concerned, I have kept myself posted as to what they were able to give us.

Q. What grade is that?

A. That's high grade oil.

Q. Well, in the market as Eupion?

A. Yes, sir.

1299 Q. What is that called at the Corsicana refinery?

A. Well, it is billed to us as Eupion.

Q. Well, don't you know what it is called as their product?

A. It is called Water White Oil.

Q. Water White?

A. Yes, sir.

Q. What is P. W. Oil?

A. Prime White.

Q. Is that an inferior or high grade?

A. It's a low grade oil.

Q. Have you had occasion to investigate and inform yourself about their production of P. W. Oil—Prime White?

A. Well, to a more or less extent, yes sir: not as far as my territory is concerned, though, because I don't sell it.

Q. Well, with regard to the other Divisions?

A. I have discussed it with them; yes, sir.

Q. Now, do they put out any other grades?

A. They put out what they call Standard White.

Q. That is known as S. W.?

A. Yes, sir.

Q. Now, what is that?

A. That's a still lower grade than Prime White.

Q. Have you had occasion to investigate the output as to that oil?
A. No, sir.
Q. Do you know to what extent they make that oil?
A. No, sir, I don't; they have some considerable stock of it, however.
Q. Now, from the information that you have, can you give us an approximate estimate of the production of the Corsicana refinery for the last five or six years of P. W. and W. W.?
1300 A. I could not give you even an approximate idea.
Q. Haven't you had occasion to investigate that in the last six months?
A. Not the total output; no, sir.
Q. You have not had any occasion, then, to inform the St. Louis office about what the probable output was?
A. Of Eupion, I have; yes, sir.
Q. Well, what is that?
A. Well, I don't recall—I should say from a thousand to fifteen hundred barrels a week.
Q. Well, has that been about the average or not, at least that, during the existence of the refinery?
A. That is a very low average; yes, sir.
Q. Well, you said a while ago it had gotten less on account of the output, but that is the least average?
A. Yes, sir
Q. What proportion, or about to what extent do you make purchases through the requisitions on St. Louis or otherwise, make purchases from the Corsicana refinery of that grade of oil—about how many barrels a week?
A. Why, I couldn't say: I don't know; I can give you an approximate idea.
Q. Well, give us approximately.
A. Eight hundred to a thousand barrels.
Q. Eight hundred to a thousand barrels a week?
A. I should judge so; yes, sir.
Q. Out of the production of twelve thousand or fifteen thousand?
A. Hundred.
Q. Oh! twelve hundred?
A. Yes, sir.
1301 Q. Well, I will ask you if it is or is not a fact that the Waters Pierce Oil Company, either the Central Texas Division or the South Texas Division, or both, have taken the entire output of the Corsicana refinery in high grade oil?
A. I don't know whether they have or not.
Q. Well, what is your information on that subject from your dealings with it and handling it?

Mr. ODELL: We object to his information, because it is hearsay, Your Honor.
The COURT: The objection is sustained. He may have information that is not hearsay, but the question is not limited to that.

Q. Well, I will ask you, Mr. Cahoon, what information you have in the course of your dealings, course of your business at Dallas,

handling one of the Divisions in Texas for this company, as to whether or not you handle in Texas the entire output, practically the entire output, of the Corsicana refinery on high grade oil?

Mr. ODELL: We renew the objection, Your Honor, that that calls for hearsay testimony, and that any information that he may have had is necessarily hearsay as to the company, unless it was communicated to them. Declarations that might have been made or statements that might have been made do not necessarily put the company on notice, especially if it is not shown that it was communicated to the company.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. I am asking you what information you got in the conduct of your business.

A. Well, I should say that we have handled a very large percentage of the output.

1302 Q. Well, are you willing to state anything further than that? I am speaking now of its best grade of oil.

A. Well, I don't know whether we have handled the entire output or not; I don't know what disposition those people are making of it.

Q. Well, you think you have handled the greater part of it?

A. Yes, sir.

Q. Now, I will ask you if it is a fact that South Texas has called on the Corsicana refinery for the larger part of their production?

A. No, sir; only in a limited way.

Q. I will ask you, Mr. Cahoon, if it is not a fact that you have endeavored to take the entire output of the Corsicana refinery in the last year?

A. So far as high grade is concerned, yes.

Q. As far as high grade oil?

A. Yes, sir.

Q. That's the oil you market as Eupion?

A. Principally; yes, sir.

Q. Under whose direction, or did you have any direction, with reference to taking as much of the output of that refinery as you could?

A. Why, in a general way I was supposed to take—to use that oil to as great an extent as I could, yes, sir.

Q. Well, in a specific way, have you had instructions from the St. Louis office in that respect?

A. I have not consulted on the placing of those orders.

Q. You have not been written to in reference to placing it?

A. The home office placed orders wherever they saw fit. I might have suggested to them shipping from Corsicana, but——

1303 Q. Do you know approximately what you marketed in Central Texas Division in January a year ago?

A. No, sir; I don't remember. January, 1906?

Q. Yes, sir.

A. I don't remember; no sir.

Q. Well, can you approximate it?
A. Possibly fifteen thousand barrels.
Q. Fifteen thousand barrels a week?
A. No, a month—in the month of January.
Q. That's what you marketed?
A. Oil and gasoline together—I should judge so, yes, sir.
Q. Fifteen thousand barrels?
A. I don't recall—don't remember what we did, but I should say possibly that's about it.
Q. Well, how many gallons would that make?
A. Between seven hundred and seven hundred and fifty thousand.
Q. Do you know what the production of the Corsicana refinery was, or approximately, in that month of both S.W., W.W., and P.W., all three grades?
A. No, sir, I don't remember; possibly I knew at that time, but I don't recall it now.
Q. I wish you would examine this letter here, Mr. Cahoon (handing witness paper).
A. I think these figures in the letter are wrong. This letter refers to fifty-two thousand barrels. I should say that should have read fifty-two hundred barrels. I don't recall writing this letter, however.
Q. It estimates it in gallons, however. Well, look through the several grades of oil there.
A. I have no recollection of writing the letter at all.
1304 Q. Well, I wish you would read the last paragraph.

Mr. ODELL: It is not the original, Your Honor; it is a copy. The witness does not have any distinct recollection of writing it, and we object, from an unidentified, purported copy——
The COURT: Do you object to his reading it?
Mr. ODELL: Yes, sir; to reading it aloud.
Mr. BRADY: I didn't mean to read it aloud.
Mr. ODELL: Oh, well, that's my mistake.

A. I don't recall getting any of that information, it is so far back; I probably did, however.
Q. That letter is dated January 13, 1906. I will ask you if you recall my being in Dallas some time last month to make an investigation at your office?
A. Yes, sir.
Q. I will ask you whether or not you furnished me copies of a number of letters and documents at my request?
A. I did.
Q. I will ask you whether or not they were prepared by the stenographer in the office?
A. They were.
Q. For which courtesy I was very thankful to you. You furnished copies of those likewise to counsel for defendant in this case?
A. Yes, sir.
Q. Now, after reading this letter or independent of this letter, can you recall the statement, Mr. Cahoon, that your Division contemplated taking only one grade of oil from the Corsicana refinery?

A. Low grades of oil referred to there are not handled to any extent in my territory.

Q. Well, you know these several grades are referred to?

A. Yes, sir.

1305 Q. I will ask you if this copy of letter refreshes your memory as to the output of the Corsicana refinery, or approximately, at that time, January a year ago?

A. Why, I presume the figures given in there are approximately correct.

Q. Well, you sent that information to the home office, did you not?

A. Yes, sir.

Q. That includes three different grades of oil?

A. Yes, sir.

Q. That estimate was about eight hundred thousand gallons, approximately?

A. Yes, sir.

Q. And you say you presume that is approximately correct?

A. At that time, I suppose it was.

Q. Now, that was only about two hundred thousand more gallons than you were using in your Division—only fifty thousand more than you have estimated?

A. Yes, sir, taking all the grades together.

Q. You have no recollection of writing that letter?

A. I don't remember it, no sir. I would state, however, that I probably wrote the letter.

Q. Well, I will ask you to state whether or not it is a fact that at that time you, together with the South Texas Division, were taking practically the entire output of the Corsicana refinery of all grades, including the South Texas Division, now, taking its entire output?

A. No, sir, the two Divisions were not taking it, by any means.

Q. Well, how about the East Texas Division then?

A. They took some of it.

Q. They took some also?

A. Yes, sir.

1306 Q. Now, Mr. Cahoon, I will ask you, since you have no independent recollection of this matter, if this is a copy of a letter from your office purporting to have been written by you and taken from your records, if that is an exact copy, then will you or not state whether the figures stated in here are approximately correct, and the statement here that it was probable that the entire stock of all grades of refined oils in Corsicana will be exhausted in February?

A. Yes, sir, I think so.

Q. That was your judgment when you wrote it?

A. Yes, sir.

Q. While we are on this subject, I will ask you to examine each of these letters. I wish you would examine each and all of those letters, please, sir, and see if you have any independent recollection of them?

Judge PENN: I would suggest, to save taking up time—these letters you are offering are the ones you got in Dallas?

Mr. BRADY: Yes, sir.

Judge PENN: Well, just submit them to us, and if they are the same as we have we will admit them.

Mr. BRADY: All right. Do you wish to make that comparison now?

Judge PENN: Well, I don't suppose Mr. Cahoon will be able to identify your copy.

(Counsel for defendant inspected the copies.)

Judge PENN: We admit that these are copies made from the originals on file in Mr. Cahoon's office.

Q. Now, Mr. Cahoon, I will ask you if letters on file in your office from which these copies are made—it is admitted they are copies—
1307 where they purport to be from A. M. Finlay, Vice President, or C. P. Ackert, General Manager, or any of the officers in St. Louis, were received by you in due course of business and were on file there in that way?

A. I should say they were, yes, sir.

Q. And the copies of letters, impression copies or other character of copies, on file in your office from which these copies were made, they purport to have been sent by you to St. Louis and were made by you in due course of business and sent to them?

A. I should say so, yes, sir.

Q. Now, when you wrote these letters of which these are copies, you gave the facts at that time as you understood them, did you not?

A. Yes, sir.

Q. And they were true and correct, as you understood it then?

A. Yes, sir.

Mr. BRADY: If the Court please, we offer these letters that have just been examined by counsel.

Mr ODELL: We object, if the Court please, to the letters offered, as follows: Letter of December 4, 1905, addressed to Charles P. Ackert, General Manager, and signed blank, Manager; January 13, 1906, letter to C. P. Ackert, General Manager, signed by blank Manager; letter of October 30, 1906, addressed to C. W. Cahoon, Manager, Dallas, Texas, and signed by A. M. Finlay; letter of January 10, 1906, addressed to C. P. Ackert, General Manager, and signed blank Manager; February 15, 1906, addressed to C. P. Ackert, General Manager, St. Louis, signed Manager blank; February 17, 1906, addressed to Ackert, General Manager, and signed in blank; a letter
of date February 17, 1902, addressed to C. P. Ackert, General
1308 Manager, St. Louis, signed by blank—for the reason that they are immaterial and irrelevant; they throw no light on any issue in this case and are only indicative of the company's method of doing business; it is private correspondence of the company, and it does not illustrate or tend to illustrate any legitimate issue in this case. For that reason they are immaterial and irrelevant and will unnecessarily incumber the record; and in the next place, there is no suggestion in the letters of a violation of any law,

and if they serve any purpose at all it could only be the possible one of prejudicing the jury by some method of the company in doing its business, as outlined in the correspondence.

(The papers were handed to the Court for inspection.)

The COURT: What is the purpose of these letters?

Mr. BRADY: They are offered to show the extent to which the Waters Pierce Oil Company obtained its supply from the Corsicana Refining Company. There is some testimony introduced in the case—I don't recall by whom—in reference to the ownership of this Corsicana refinery, tending to show that it is the property of the Standard Oil Company system and one of their refineries in Texas, and we have an allegation in the petition that that is a fact. We have an allegation in the petition that they are not engaged in the retail business or marketing of oils in the State except by sale from the refinery itself—substantially that allegation—and we offer the circumstances in connection with the allegation in the petition about the ownership of this refinery.

The COURT: Let me see the letters again.

(The letters were again handed to the Court.)

1309 The COURT: The objection to the letter of date February 17, 1906, addressed to Mr. C. P. Ackert, General Manager, and to the letter of December 4, 1905, addressed to Mr. Charles P. Ackert, General Manager, is sustained; otherwise, the objection is overruled.

Mr. ODELL: We except, Your Honor.

Judge PENN: If the Court please, there are two of February 17th; did you specify which?

The COURT: The one on the bottom.

Mr. BATTS: Will the Court permit me to suggest that this particular one was in the batch, but I think that this is admissible upon yet another ground. The letter of December 4, 1905, excluded by Your Honor. If you will see what it is, I will discuss the proposition. (Hands letter to the Court).

Mr. BATTS: The suggestion made in the petition, and which we have undertaken to establish, is that among the—that the Waters Pierce Oil Company undertakes by unfair methods and underhand schemes to absolutely destroy all character of competition, and this letter shows that——

Judge PENN: Now, if the Court please, we object to Mr. Batts' undertaking to discuss in the presence of the Jury what the letter says.

The COURT: The Court has passed on the objection that the letter is immaterial and irrelevant upon the question of the output of the oil of the Corsicana Refinery. Counsel for the State says it is admissible on another theory——

Judge PENN: But we say that they can't do that without expressing what is in the letter——

The COURT: The Court was about to remark, when interrupted, that the Sheriff could withdraw the Jury. Retire the Jury, Mr. Sheriff.

(Thereupon the Sheriff retires the Jury.)

1310 Mr. BATTS: Now, Your Honor, the evidence already introduced is to the effect that the business—to follow out the line of argument already started, that was to the effect that the Waters Pierce Oil Company, by its underhand method of doing business, of taking advantage everywhere by misleading people and for the purpose of absolutely destroying competition of every character,—we made allegations covering that idea and we have introduced some evidence on that subject. We have also established by this witness that its highest grade of oil is Eupion Oil, and the evidence all along has indicated that this was one of the bases of the business of the Waters Pierce Oil Company. For instance, in the testimony of Mr. Pierce, he lays great stress upon the circumstance of the fine quality of this Eupion Oil, and the circumstance that he gets business by virtue of that Eupion Oil. This high grade, now, we want to show, and this letter will show, with a number of others, that wherever it could be done, that an inferior quality of oil was put in and sold as Eupion Oil; and especially where they were compelled, by reason of competition, to reduce the price of oil, that they immediately sold an inferior grade of oil as Eupion Oil. Now, of course, I would not make the proposition that this should,—oh, I don't know what you call it exactly; I would hate to designate it as swindling, but it is certainly very sharp practice; and that this sharp practice is a part of the general business of destroying competition, we will also show that there is a very great deal of difference in the cost of this Corsicana S. W. 112 and Corsicana W. W. 150, or whatever it is that constitutes Eupion Oil, and by using inferior grades and paying a great deal less for it and putting it off on the people and dealers as a high grade oil, that they are able to absolutely destroy competition, because nobody can meet them on that basis. It is
1311 just one of those circumstances that go to make up their business,—all of their business being directed to the absolute destruction of competition.

The COURT: The letter simply contains a question as to whether he would be allowed to sell an inferior grade as Eupion Oil. Does it go to show that it was consented to, or that he was permitted to sell it as Eupion Oil.

Mr. BATTS: Yes, sir. The Manager at Dallas is now asking for authority to do this, and it will be shown that ordinarily whatever recommendations are made by the Manager at Dallas, are acquiesced in by the Manager at St. Louis. Now, whether this letter shows that, I can't recall, but that was the course of business, and I introduce this letter as indicating that course of business in regard to that particular matter.

The COURT: Gentlemen, I think the letter is more calculated to arouse the prejudice of the Jury on an immaterial matter, than on the question as to whether or not the anti-trust law has been violated. The objection is sustained.

Mr. BATTS: We except. Of course, this will cover a great many letters of the same kind.

(Jury returns.)

Mr. BRADY (to the Jury): Gentlemen, I will read you these letters introduced in evidence. (Reads following letters:)

Letter dated January 10, 1906, addressed to Mr. C. P. Ackert, General Manager, St. Louis, Missouri; signed "Yours truly, blank Manager."

These letters are admitted to be copies taken from the Dallas office of this Company; they are copies taken by me some two or three weeks ago.

1312 The next letter is January 13, 1906, relating to subject, Corsicana oil. "Mr. C. P. Ackert, General Manager, St. Louis, Mo."

The next letter is February 15, 1906, relates to Orders Nos. 294 and 304.

Letter of February 17, 1906; estimated output of refinery.

Letter of October 30, 1906, to C. W. Cahoon, signed A. M. Finlay.

Letter of December 18, 1905. (This was not read.)

Mr. BRADY: If the Court please, I was a little uncertain whether this letter was included with the, or not.

Judge PENN: No sir, it was not. Do you offer this, Mr. Brady?

Mr. BRADY: No, we haven't offered it yet.

The COURT: The objection will be sustained.

Mr. BRADY (to the Stenographer): Will you please take this down: Letter of December 18, 1905, to C. P. Ackert, excluded, and ruling excepted to by State.

Q. Now, Mr. Cahoon, I notice certain figures after these grades of oil. I wish you would explain what they mean. W. W. 120; that 120, what does that refer to?

A. That is a refinery term for fire test. It does not necessarily mean that the oil is 120 Fire Test; it is simply approximately that.

Q. They classify it as that test——

A. It might be 130 or 135, but it is referred to as 120.

Q. Well, P. W., Prime White 150,—that also refers to the fire test as classified by the refinery?

A. Yes, sir.

Q. And 112, also refers to the classification?

A. Yes, sir.

1313 Q. Now, I will ask you, Mr. Cahoon, whether or not you have in the course of your business in Dallas, as Manager of the Division there, placed any orders directly with the Corsicana refinery?

A. No, sir; never.

Q. Don't recall having placed any orders direct?

A. To the best of my recollection, no.

Q. Where are all your orders on that refinery placed?

A. All of our orders are placed with our St. Louis office.

Q. Whose business is it in your Divison to gather statistics, if it is the business of any one, in reference to the percentage of business that your Company is doing in that territory, and your competitors are doing in that territory?

A. It is the duty of the agents and salesmen; all of them.

Q. Well, whose duty is it to furnish that information to the Missouri office?

A. I do it personally.

Q. It goes through the Division office, and through you personally, and the Central Texas Division?

A. Yes, sir.

Q. Have you been familiar with those details, and with the particular work, as part of your duties, since you were Assistant Manager and also while Division Manager?

A. Yes, sir.

Q. You have a more or less, or fairly accurate knowledge of the percentage of business your Company has been doing since 1900?

A. Reasonably so, yes, sir.

Q. I wish you would state what percentage of the business your Company has done since 1900 to the time of the filing of this suit.

A. I could not give you anything but an approximate idea.

Q. Well, give us the best idea you can.

1314 A. I should say possibly eighty per cent.

Q. Possibly eighty per cent. Do you mean possibly as low as eighty or as high as eighty?

A. Within five per cent. either way; it is merely an estimate.

Q. Well, are you trying to average it during those years?

A. Why, I am basing my estimate on the past year. I don't recall the conditions prior to that.

Q. Well, your competition has been a little more active last year than previously?

A. No; not any more than the year before.

Q. Well, within the last two or three years your competition has been more active than previously?

A. Yes, sir; I expect it has.

Q. From 1900, say, until 1903, when you became the Division Manager, are you willing to state that your percentage was as low as eighty per cent., or will you place it higher?

A. I don't know; I don't recall what it was at that time.

Q. Your Division, of course, is the Central Texas Division. I will ask you, as a matter of refreshing your memory, whether or not, in the year 1903 your percentage of the business in refined oils was not eighty-eight per cent., or approximately that?

A. I do not know; I have no recollection of the matter.

Q. Well, will you say it was not as great as eighty-eight per cent.?

A. I do not know; I have no idea what it was.

Q. In the year 1904, I will ask you if your percentage of refined oil was not eighty-two per cent.?

A. I do not know, sir.

Q. Well, will you say it was not as great as eighty-two per cent.?

A. I have no recellection of it.

Q. Well, coming to gasoline, in the Central Texas Division for 1903, was not your percentage in gasoline over ninety-five per cent.?

1315 A. Where?

Q. In the Central Texas Division, entire Division for the year 1903,—didn't you do ninety-five per cent. of the business on gasoline?

A. I don't know.

Q. On the two,—gasoline and refined oils,—did you not do eighty-

nine per cent. of the total business, according to your statistics furnished by you?

A. I don't know; I do not remember.

Q. Well, will you say that that is not approximately correct,—eighty-nine per cent. of the total gasoline and refined oils for 1903?

A. I would not think it was as large as that; as high a percentage as that.

Q. Do you know, Mr. Cahoon, whether anybody else has been furnishing the St. Louis office with statistics and data about that?

A. I think not.

Q. You have never heard of any one else?

A. No, sir, unless——

Q. Have you any information as to the extent of business in the South Texas and Louisiana Division?

A. No, sir. Do you mean do I know anything about the business down there?

Q. Yes.

A. No, sir.

Q. Well, through talking with the agent, Louis Fries, of the South Texas Division,—do you know anything about that?

A. No, sir; don't recall of his ever having mentioned how much business he was doing.

Q. Understand you to say, Mr. Cahoon, that you will not deny that the percentage of the business done by your Company for the last five or six years has not been in the neighborhood of eighty or ninety per cent.

1316 A. I have no recollection as to what the percentage was over a year back. I should say it was approximately eighty per cent. during the past twelve months.

Q. And your competition has been greater during the past two years than previously?

A. Yes, sir, somewhat greater.

Q. Whose business was it in the Central Texas Division to look after competition, and to meet the competition, and keep up your end of the business to the best advantage for the company, generally, over the entire territory?

A. Every employee connected with the company.

Q. Under whose supervision and whose direct attention was given to this matter; who was held responsible in Texas for those matters?

A. I am, in my territory.

Q. Well, that's what I am speaking of,—the Central Texas Division. You are held responsible for taking care of that?

A. Yes, sir.

Q. I understand you to say that your agents were required to give you information as often as required and as often as they got it, concerning competitive shipments and receipts.

A. In a general way, yes, sir. They keep us posted, or are expected to keep us posted, not only on the business that we are doing, but in the business that they are losing.

Q. In other words, the business that your competitors are getting; isn't that a fact?

A. Yes, sir.

Q. How about the prices that your competitors are obtaining in the territory they are doing business in? Are you informed on that subject?

A. Yes, sir, reasonably well.

1317 Q. Well, as frequently as the agents could get the information to you?

A. Yes, sir.

Q. Did you transmit that information to the St. Louis office?

A. Yes, sir.

Q. The prevailing business that your competitors were getting and the prices they were selling?

A. Yes, sir.

Q. Now, did you make that in a general way, or did you make specific reports concerning merchants in any town?

A. I rarely ever mentioned any particular merchant; just mentioned conditions as a whole.

Q. You say it was unusual to furnish information of that character to the St. Louis office and the conditions with reference to certain particular merchants and dealers?

A. Why, I expect I referred to some merchants quite frequently, but taking the business as a whole, or the correspondence as a whole, very little reference was made to the individual merchant.

Q. You mean compared with the volume of correspondence?

A. I mean to say that my letters had reference to conditions as a whole, generally.

Q. But you did frequently write them with reference to individual merchants, respecting prices made to them?

A. I did at times, yes, sir.

Q. I will ask you what method the Company pursued in meeting competition throughout your Division since you have been Assistant and Division Manager?

A. Well, we don't make a practice to meet the competitors' prices as a rule.

Q. Well, in what way would you get rid of the competition, or try to get hold of the business?

1318 A. We would depend on good service and a high grade of goods to regain and hold the trade.

Q. Now, was that all you depended on?

A. As a general proposition, yes, sir; occasionally we had to meet the competitors' prices.

Q. Made it a special proposition. Wasn't it a frequent thing for you to reduce your prices to meet competition?

A. Why, no, sir; I would say that at very few of the points the competitors' prices were below ours.

Q. That your competitors' prices were below yours?

A. Were below, and are to-day, yes, sir.

Q. Were they furnishing the same grade of oil?

A. I do not know.

Q. Wasn't it a frequent thing for you to reduce the price of your oils to meet competition?

A. Not a frequent thing; we did it at times.

Q. Did you give rebates or discounts to special merchants?
A. In a very limited way we have done such things, yes, sir.
Q. About how many letters are there in your office referring to special rates and discounts during the last few years?
A. I have no idea.
Q. There are hundreds of such letters, aren't there?
A. In the last three or four years?
Q. Yes, sir.
A. There may be; I haven't any idea.
Q. What two grades of oil did you market, or what different grades of refined oils did you market, Mr. Cahoon, and are you now marketing?
A. Under what brands?
Q. Yes, sir, I mean the brands.
A. Eupion and Brilliant.
1319 Q. What difference in the selling price is there of these oils?
A. Approximately three cents.
Q. That's the retail business or wholesale?
A. Wholesale.
Q. What difference is usually made with the retail trade?
A. I don't know; I should say five cents, though, on an average.
Q. What difference in the cost at the refinery, or as purchased from the refinery?
A. I do not know.
Q. You don't know the difference in the cost to the company?
A. No, sir.
Q. But about three cents wholesale and five cents retail, approximately?
A. I should say so, yes, sir.
Q. Now, you say that you market a high-grade oil. From the Corsicana refinery you handle the Water White as your Eupion brand?
A. That is the refinery term for the oil they furnish us.
Q. I believe your answer to me in the beginning of your examination was that you market Water White 112, wasn't that correct?
A. The refinery term of 120.
Q. 120 instead of 112 as the Eupion Oil that you were marketing?
A. As a general proposition, yes, sir.
Q. You say that you were handling a high grade oil. Isn't it true that you used considerable of the P.W. and S.W. oil, and marketed it as Eupion?
A. Now——

Mr. ODELL: I object, because it is not a violation of law, and can only be used for the purpose of basing inflammatory arguments.
The COURT: The objection is overruled.
Mr. ODELL: We except.

1320 Q. Isn't it a fact that you used considerable P.W. and some S.W., that is Prime White and Standard White, production of the Corsicana refinery, under the name of Eupion oil, and marketed it in Texas?

A. At the present time?
Q. No, during the last seven years,—since 1900.

Mr. ODELL: We renew the same objection.
The COURT: The objection is overruled.
Mr. ODELL: We except.

A. To the best of my recollection, that was never done, except possibly for sixty days.
Q. When was that sixty days?
A. As near as I can remember, the first of last year.
Q. Why did you do it?
A. Because we couldn't get a supply of the other oil.
Q. Where did you do it?
A. I presume at a dozen or two places, possibly twenty.
Q. You sold it at Stephenville, didn't you.
A. I don't remember.
Q. Then it was on account of the fact that you couldn't get the higher grade of oil, that you marketed it as Eupion; that you used that oil for sixty days.
A. Yes, sir.
Q. Competition had nothing to do with it?
A. No, sir.
Q. Positive of that?
A. Yes, sir.
Q. You are positive that in no instance you marketed Prime White or Standard White, as Eupion, to meet competition?
A. Not to my knowledge.
Q. I will ask you if you ever found the condition such as to ask authority from the St. Louis office?
1321 A. On account of competition?
Q. Yes, sir.
A. I don't recall ever doing it; I might possibly have made reference to it in regard to some competitive proposition, but I don't recall it.
Q. Mr. Cahoon, you were with the company, of course, in 1900, as Assistant Manager, that is to say, that you were actually performing the duties of Assistant Manager, although not having received the title?
A. Yes, sir.
Q. I will ask you what change, if any, was made in the Company's method of doing business, and what change occurred in its business in any way, that you can recall after the dissolution in 1900, and the reorganization?

Mr. ODELL: We object to that, if the Court please, for the reason that it is immaterial and irrelevant, as to whether this company did business as the former company had been doing business. The issue in the case is as to whether this company had been doing business in violation of law, and not as to whether it was pursuing its business along the same lines some company theretofore had been carrying on its business.
The COURT: The objection is overruled.

Mr. ODELL: We except.

A. I don't remember any material change in the manner of doing business.

Q. How about the office force and employees?

A. I don't recall any changes.

Q. Recall any changes?

A. None that I remember of, no, sir.

Q. Any change in the property of the company?

1322 A. The property was transferred to the new company.

Q. To the new company. Do you remember some property out at Oak Cliff that stood in the name of John D. Johnson?

A. I have heard of it.

Q. Any change made in that after the new company was organized?

A. Not that I know of.

Q. Do you or not render that property for taxes at Dallas?

A. I think our local man at Dallas does.

Q. I will ask you if that property stood in the name before and stood in the name of John D. Johnson after the reorganization of the company?

A. I have no knowledge.

Q. Your local agent made the tax rendition?

A. Yes, sir.

Q. I will ask you if you know of any change in the status of the title of that property at Dallas?

A. I don't recall any, but I would not have known it had there been a change.

Q. I will ask you if there isn't some correspondence in your office relating to that very matter, reminding you that that property was in Mr. Johnson's name and would so remain after the company was re-incorporated?

A. I don't remember such a letter.

Q. Do you deny that there is such a letter?

A. I do not know; I do not know anything about it.

Q. Well, in any other respects, has there been a change or any change in the company or in the methods of the company after the reorganization of the company, than what existed before?

A. Well, our general method is somewhat different at the present time than it formerly was; our system of deliveries are more elaborate.

Q. Getting more active?

1323 A. Working the trade closer than we ever did, yes, sir.

Q. Was there any change in the stationery of the company?

A. Yes, sir.

Q. What was the difference?

A. The present stationery shows the date of the incorporation of the new company.

Q. Well, I mean at the time the company was reorganized? What kind of stationery did you have? Did you have a rubber stamp?

A. I don't remember.

Q. You afterwards got a supply with it printed there?

A. Possibly so; I don't remember.

Q. Well, how about your books? Did you open up a new system of books?

A. I think not, no, sir.

Q. How about your customers' accounts,—did you close them out just at the time of the dissolution and open up new accounts with the customers?

A. I don't know how that was handled.

Q. What is your best recollection?

A. I have absolutely no knowledge as to what was done: I was on the road when the change was made.

Q. Well, did you stay on the road while the company was going out and coming back in again?

A. I don't remember.

Q. Well, did they call you in, or did you keep a-traveling?

A. I don't remember; it——

Q. Well, what is your recollection about it,—whether it suspended your business operations until the change in this company on the 29th day of May, in Missouri, and then the re-introduction into Texas two days afterwards; did it suspend you in any wise at all?

A. So far as I recall, I continued to work as hard afterwards as before.

1324 Q. Did you know that the change took place?

A. Yes, sir; I was advised.

Q. Did you know when Mr. Johnson and Mr. Pierce left St. Louis and came to Austin?

A. Not that I remember of.

Q. Well, did you know when the company was actually reincorporated? Were you advised at all after it happened?

A. I don't recall when I was advised.

Q. When you got back to Dallas, did you find it out then, or on the road?

A. The probabilities are I was advised by the gentleman who was Manager at that time.

Q. And Mr. Grice was?

A. Yes, sir.

Q. Well, what change was there is your salary? Did you get a larger or a smaller, or the same salary?

A. The same salary.

Q. Any changes in the other employees' salaries?

A. Not that I know of.

Q. I asked you a while ago if it interfered with your traveling at all. Do you recall any notice of being fired, while on the road?

A. I recall receiving such a notice.

Q. Did you get it while traveling or after you got back to Dallas?

A. I don't remember when.

Q. To refresh your memory, I will ask you if you didn't open your mail and find one letter showing your discharge and another showing your re-appointment?

A. I don't remember. My recollection is that I received the notice of discharge prior to receiving the notice of re-appointment.

1325 Q. How long prior?

A. I don't recall it.

Q. Did you take the matter up with the Division Manager, to find out about it, and didn't you want to know why you were fired?

A. I don't remember.

Q. Did you have any conversation about what you would do about a new job?

A. It is possible, but I don't remember it.

Q. Well, isn't it a fact that when you left on the trip, you knew about the company being dissolved and you were not afraid about your job, and didn't pay any attention to the matter?

A. I didn't worry much; I was in hopes the company would stay in business.

Q. Are you familiar with the contracts, Mr. Cahoon, that you had; forms in your office there? Look at that Form G-707. Is that a form that you used in the office at Dallas?

A. It appears to be, yes, sir.

Q. Was that used throughout your Division?

A. Yes, sir.

Q. Do you still use that form, do you know?

A. I am not sure about that; I don't pay much attention to the contract forms. They are handled by another man in my office, and I wouldn't be positive.

Q. I wish you would look at this and see if you remember the occasion of my taking that, as a copy of your agreement?

A. I recall your taking a copy, yes, sir.

Q. It was furnished by your stenographer?

A. Yes, sir.

Q. Do you know whether that is the copy or not?

A. I don't know, but it appears to be.

Q. You are familiar with Form G-710? Did you have a form of that kind?

1326 A. I don't know; don't remember what it deals with. Is it a contract form?

Q. Yes, sir; to refresh your memory, I will show you a clause taken from it. (Shows to witness.)

A. Yes, sir, that's a railroad contract.

Q. You recognize that form, G-710?

A. Yes, sir.

Q. Do you recall, Mr. Cahoon, whether or not you have a large number of contracts on file in your office that were made during the years 1903, 1904 and 1905, on Form G-707, that contract similar to the one I had there of the Greenville Water Company?

A. We have a large number of contracts on file in the office, but as to the form, I am not certain.

Q. Do you recall submitting to me while inspecting the books and records, a large number of contracts during those years?

A. Yes, sir.

Q. You don't know how many contracts you had in force in 1903, 1904, and 1905, similar to the Greenville contract, on Form G-707?

A. No, sir, I haven't any idea.

Q. I will ask you to state whether or not the contracts you showed me while I was there and inspected by me, were regular contracts made by your company in the course of its business, and kept there as part of its records?

A. Yes, sir.

Q. I presume you have no independent recollection or memory of about how many contracts on the various forms you have on file in your office in Dallas?

A. No, I have no idea.

Q. I will ask you whether the forms you use were prepared by yourself or sent from St. Louis?

A. They were sent from St. Louis.

1327 Q. They were received by you, as Manager, from St. Louis?

A. Yes, sir.

Q. Now, do those forms,—have you any recollection of any particular clause in them, Mr. Cahoon?

A. No, sir.

Q. Well, to refresh your memory, and to impress upon you what I mean, I will call your attention to this clause: "The second party——

Judge PENN: If the Court please, we ask the Counsel just to hand that to the witness. This paper is not in evidence.

Mr. BRADY: All right. (Hands paper to witness.)

Q. You have read that clause?

A. Yes, sir.

Q. That is the last clause of that contract, is it not, on Form 707-G? That is the last clause of the contract, isn't it?

A. Yes, sir.

Q. I will ask you to state whether or not in the conduct of your business, of the North Texas Division, you made numerous contracts containing that clause, in the Central Texas Division?

A. I presume we did, yes, sir.

Q. As often as you could get contracts of that kind?

A. We got all the contracts we could, yes, sir.

Q. You recognize the pertinence of that clause, don't you?

A. Yes, sir.

Q. Did you get as many of that kind as you could?

A. I presume we did. As I stated before, I am not familiar with the form numbers; I could not say positively that that contract is in use.

Q. Just leave out the printed designation of the form, and take the substance of it,—that particular clause in that contract: did you or not, in the course of your business, get as many contracts of this kind as you could?

1328 A. I presume we did, yes, sir.

Q. Well, didn't you get them?

A. Did you ask a question?

Q. Well, did you get a great many of them?

A. Yes, sir, I should suppose so. I haven't looked at the contracts myself for some time and do not know how many we have.

Q. I believe you stated that this was one of the forms in use in your office during those years.

A. That form has been used in our office.

Q. Well, I will show you again that contract with the Greenville Water Company.

A. Yes, sir, that's the contract.

Q. That contract is commonly in use in your office?

A. Yes, sir; I presume so. I don't know——

Q. (Hands witness paper.) I will ask you to examine the contract with reference to the amount of purchase there. (Witness examines paper.) Now, I will ask you this question with reference to the contracts of this kind generally,—how did you figure out the amount of goods that these people would take and how did you fix the amount of the contract?

A. Those estimates are made by the customers themselves.

Q. Made by them?

A. Yes, sir.

Q. Intended to cover about what, Mr. Cahoon, if you know?

A. To cover their requirements for the period covered by the contract.

Q. In other words, their estimated consumption for the year?

A. Yes, sir.

Q. These contracts were all executed yearly, just annual contracts?

A. Most of them; yes, sir.

Q. Well, you recall anywhere they lasted more than one year?

A. Not many; we have had a few.

1329 Q. I wish you would examine this letter, Mr. Cahoon. (Hands letter to witness.) Do you have any independent recollection of that letter, Mr. Cahoon?

A. No, sir; it is probably a letter I wrote all right.

Q. You know whether that is a copy of a letter I got out of your office in Dallas, that you had prepared by your stenographer?

A. I presume it is.

Q. Is that the original letter or your stenographer's memorandum?

A. That refers to my initials, my dictation, and the number of the stenographer.

Mr. BRADY: I submit that letter to you as one of the letters.

(Hands letter to counsel for defendant.)

Judge PENN: We object to the introduction in evidence of this letter, first, because it is irrelevant and immaterial, and, second, because it appears that the letter embodies a proposition or suggestion from the Manager of the Waters Pierce Oil Company at Dallas, to its General Manager at St. Louis, and there isn't anything to show that his proposition or suggestion was accepted or adopted by the Manager at St. Louis. (Hands letter to the Court.)

The COURT: What is the purpose of the letter?

Mr. BATTS: The purpose is to show—we undertake to show that the entire purpose of this proposed change in price is to get competi-

tion out of particular territory in order that the price might be advanced. We will undertake to show by the General Manager that this was acted upon.

The COURT: You expect to show that the suggestion contained in that letter was adopted and authorized by the General Manager?

Mr. BATTS: I don't know what we can show; I believe that is the case, and the General Manager will be put on the stand for the purpose of showing it.

1330 Judge STEDMAN: We submit that that fact should be shown; the General Manager is present and doubtless will be introduced. That fact should be shown first; our case might be prejudiced before the jury by the suggestion that wouldn't amount to anything otherwise).

Mr. BATTS: In any event, it indicates the purpose of the Texas Manager, and why he is making the recommendations for this change.

The COURT: The letter isn't admissible in evidence against the defendant unless the State connects it as it states that it proposes to do. In view of the testimony of this witness that the defendant's success in doing business, was by reason of its superior line of goods and not by reason of any other inducement, it is admissible so far as the weight to be given his testimony. The objection is overruled.

Judge STEDMAN: We except.

Mr. ODELL: In view of the Court's ground, with reference to the ground on which this letter might be admissible, we desire to call attention to the fact that the witness is a witness for the State in this case and the State has shown no surprise at the witness' testimony, and no reluctance on his part to furnish them information. It affirmatively appears that they called on him at Dallas and obtained such information as they desired, and upon that particular suggestion of the Court as to the relevancy of the testimony, we make that suggestion.

The COURT: I don't care to comment on the testimony of the witness at all, but I understand it is proper in that character of testimony.

Mr. ODELL: We except.

Mr. BRADY: This letter is dated February 10, 1906, addressed to Mr. C. P. Ackert, General Manager, St. Louis, Mo., relating

1331 to Walker Smith's Grocery Company at Brownwood. (Counsel reads letter to Jury.)

Mr. BRADY: I handed you a letter just now, did you examine that?

Mr. ODELL: Yes, sir. (Hands letter back to State's counsel).

Mr. BRADY: We offer this letter of March 7th.

Judge STEDMAN: We object to the letter of March 7th, on exactly the same grounds we objected to the letter of February 10th. I would like for Your Honor to inspect that. (Hands letter to the Court).

The COURT: The objection is overruled.

Judge STEDMAN: We except.

Mr. BRADY: Letter dated March 7, 1906, relating to stove and gasoline, addressed to Mr. C. P. Ackert, General Manager, St. Louis, Missouri. (Reads letter to Jury.)

Mr. BRADY: We offer the letter of March 7th, relating to gasoline prices.

Judge STEDMAN: We object to this letter on the ground of irrelevancy and immateriality. (Hands letter to the Court.)

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Mr. BRADY: Letter dated March 7, 1907, relating to gasoline prices, addressed to C. P. Ackert, General Manager, St. Louis, Mo. (Reads letter to Jury.)

Mr. BRADY: We now offer this letter also, of March 7th, Rotan Grocery Company letter.

Judge STEDMAN: We object to that letter, first, because it is immaterial and irrelevant, and, second, because the letter contains a proposition or suggestion made by the Manager of the Waters Pierce Oil Company in Dallas, to its General Manager at St. Louis, and there isn't anything shown to the effect that the General Manager at
1332 St. Louis accepted the proposition or adopted the suggestion. (Letter is handed to the Court.)

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Mr. BRADY: This letter is also dated March 7, 1905, I think it is; you make that five or six? (Hands letter to Judge Penn.)

Judge PENN: I don't know.

Mr. BRADY: Well, it is either five or six.

Mr. JOHNSON: All of those are 1906.

Mr. BRADY: Well, we will make it 1906 then,—March 7, 1905 or 6, discount Rotan Grocery Company, Waco, addressed to C. P. Ackert, General Manager, St. Louis. (Reads letter to Jury.)

Mr. BRADY: We next offer in evidence this letter in reference to the Dallas merchants,—December 9th.

Mr. BRADY: We offer the Morris letter.

(No objection from counsel for defendant.)

Mr. BRADY: March 2, 1906, discount B. L. Morris, Fort Worth, addressed to C. P. Ackert, General Manager, St. Louis, Mo.

Mr. BRADY: We offer letter of March 23, 1906.

Mr. ODELL: We have the same general objection to that one, that it is irrelevant and immaterial; that is the letter dated March 23, 1906,—"Discounts Snider Brokerage & Storage Co., San Angelo."

The COURT: The objection is overruled.

Mr. ODELL: Defendant excepts.

(Mr. BRADY reads letter to Jury.)

Q. Now Mr. Cahoon, I will ask you to state whether or not it is a fact that prices on your oils at points where there is no competition are less than those points where there is competition in your Division?

Mr. ODELL: We object to that for the reason that it is
1333 wholly irrelevant and immaterial, the comparative prices asked for at competitive and non-competitive points, and is calculated to prejudice our case, and it is not in violation of the law to meet competition, even to the extent of reducing prices.

The COURT: The objection is overruled.
Mr. ODELL: We except.

Q. (Question read by Stenographer.)
A. In some cases there are and others there are not.
Q. Well, isn't it a general rule that where the railroad rate is the same, that the prices are lower where there is competition than where there is no competition?
A. We have competition at practically every agency in my territory.
Q. Well, then, I will ask you if it isn't a fact that the prices are less at those points where you have active and vigorous competition than they are where your competition is not active and aggressive?
A. I will answer that as I did the other; at some places they are and others not.
Q. Then I will ask you to state where you meet aggressive competition, what points in your territory, and have been recently?
A. Well, Paris is a very strong competition.
Q. Well, what price had you on Eupion Oil,—what has been the prevailing price at Paris on Eupion?
A. Fourteen cents is my recollection.
Q. Fourteen cents on Eupion; what on Brilliant?
A. Ten and a half, I think.
Q. How long has that been the prevailing price at Paris?
A. Eupion price has been the same for a year or more.
Q. For a year or more.
A. Yes, sir.

1334 Q. Now, I will ask you to state some other point in your Division which has the same freight rate as Paris, all the points in your Division that have the same freight rate as Paris, every one of them from Corsicana up.

A. Bonham, Honey Grove, Clarksville—there is a hundred of them practically all the same freight rate.
Q. Well, all right, what are the rates for Eupion and Brilliant at Bonham, Honey Grove and Clarksville,—have been for the past year?
A. Bonham is fourteen cents; Honey Grove is fourteen, as I recall it, I am not positive about that; Clarksville is fourteen.
Q. Some difference as to Brilliant?
A. Approximately, there may be half a cent difference on the Brilliant; I am not positive about that; we sell very little of it.
Q. Well, what is the difference between the freight rate to Paris and the freight rate to Greenville?
A. Just the same, I think.
Q. Well, have the prices been for the last year at Greenville fourteen cents?
A. No, sir.
Q. What difference?
A. Well, the price is thirteen and a half, my recollection, or possibly thirteen; now, I am not sure about that.
Q. To what do you attribute the difference between the price at Greenville and at Paris, both having the same freight rate?

A. The change at Greenville was brought about by a competitor cutting our price.

Q. Then, as a matter of fact, in that instance where the same freight rate obtains, the only reason why Eupion oil is half a cent or one cent less than at Paris, is on account of competition, isn't it?

A. Not necessarily; the larger gallonage we market at a town the less it costs per gallon to market it, and that cuts some figure.

1335 Q. Well, is your cost of marketing at Paris, Bonham, Honey Grove and Clarksville, the same at every one of those points?

A. Approximately; if there is any difference it costs us a little more at Paris; it is exactly the same at the other points.

Q. The cut at Greenville, you said that the cut was on account of competition, competitor cutting your price?

A. Yes, sir.

Q. What railroad line is Commerce on, from Corsicana?

A. Is on the M. K. & T., I think.

Q. You know whether the rate at Commerce is different from the rate at——

Mr. ODELL: He is mistaken about the road; it is on the Cotton Belt.

The WITNESS: On the Cotton Belt, yes, sir.

Q. Texas Midland also, isn't it. Well, is there any difference in freight rate from Corsicana to Commerce than from Corsicana to Paris, Bonham, Clarksville and Honey Grove?

A. I think not; no, sir.

Q. What is your rate at Commerce on Eupion and Brilliant, respectively, for about the last year?

A. I don't remember what our prices are; the price on Brilliant, if I remember correctly, is nine and nine and a half; Eupion trade is fourteen.

Q. Eupion fourteen?

A. I am not sure about that, though.

Q. Why was Brilliant nine and a half there at Commerce and Eupion was fourteen the same as at Paris, Bonham, Honey Grove and Clarksville?

A. Brilliant was a cent less per gallon; that was brought about by a cut on the part of the competitor.

1336 Q. That was brought about by a cut by the competitor; I will ask you whether or not in December, December 1, 1905, your price for Brilliant was twelve and a half cents at Commerce, and Eupion was fifteen cents? Do you remember about that?

A. I don't remember, no, sir.

Q. Well, will you state that it was not?

A. I wouldn't make a statement one way or another because I don't remember it. It is too far back.

Q. Well, now, that difference at Commerce is due to the cut by the competitor; you kept Brilliant over there too?

A. Yes, sir.

Q. And likewise at Greenville?

A. Yes, sir.

Q. Well, there are a great many instances, are there not, of that kind, as to Eupion and Brilliant in your Division? I will ask you if it isn't a fact that your prices are regulated in those places by the competition very largely?

A. To some extent they are, but not entirely by any means.

Q. Well, isn't it a fact that you get the best prices you can get for your product, considering competition that exists and the competition that it would probably bring into existence if you raised the prices?

A. Up to a certain point, yes, sir.

Q. Well, don't you get the best prices you can get, considering the competition and competition you will probably bring into existence?

A. We have a great many places where we had active competition in the past and don't have it now.

Q. In one of your letters you say that the St. Louis office advised, or you advised the St. Louis office to make an advance on gasoline, general advance, and general advance on your refined oil,
1337 and you say, "where it would be safe"; what did you mean by that?

A. I probably meant by that that we could hold the trade.

Q. You could make that advance and hold the trade; then your competition did have considerable to do with your prices?

A. To some extent, yes, sir, but not entirely by any means.

Q. Well, I don't guess you would put it a dollar a gallon if there was no competition, but it did have a material effect on your prices, didn't it?

A. Where competitor cuts our price, it frequently becomes necessary for us to put into effect a reduction.

Q. I will ask you to examine this letter and see if you remember that circumstance? (Hands witness a letter) Have you any independent recollection of that letter? (Letter in reference to conditions at Commerce, December 1, 1905) Have any independent recollection of that?

A. No, sir, I do not; I probably wrote the letter.

Mr. BRADY: Will you compare that, gentlemen? (Hands letter to counsel for defendant.)

Q. Did you have anything to do with the fixing of the price at which your products are sold throughout your Division?

A. Only in a limited way.

Q. Well, what do you mean by limited way?

A. I make my recommendations and they are advised me by our St. Louis office.

Q. Final control of that matter is in whom?

A. General Manager Ackert's office.

Q. General Manager Ackert, of St. Louis?

A. I presume he is; I correspond with him in regard to changes.

Q. Well, from whom do you get your authority when you make your recommendations?

A. From whom do I get my authority to make recommendations?

1338 Q. No, after you have made the recommendations, when you act upon them?

A. General Manager Ackert.

Q. That applies to advances and reductions likewise, doesn't it?

A. Yes, sir.

Mr. BRADY: We offer this letter. (Above referred to.)

(No objection by counsel for defendant.)

Mr. BRADY: "Reduction at Commerce, dated Dec. 1, 1905, to Mr. C. P. Ackert, General Manager, St. Louis, Mo."

Mr. BATTS: Mr. Cahoon, do you know the signature of Mr. A. M. Finlay?

A. I would probably recognize it, yes, sir.

Mr. BATTS: You had frequent correspondence with him?

A. Yes, sir.

Mr. BATTS: I will ask you to state whether or not this is his signature? (Hands witness paper.)

A. I should say it was, yes, sir.

Q. You think that it is his signature?

A. Yes, sir, I should say it was, yes, sir.

Thereupon Court adjourned until 8.30 p. m.

Court re-opened at 8.30 p. m.

Examination of C. W. CAHOON continued.

(By Mr. BATTS:)

Q. I note that you make a number of recommendations, Mr. McNall, Mr. Cahoon, to Mr. Acker, or other parties at the St. Louis office,—were those recommendations ordinarily acted on? The change of price, etc.

1339 A. Approved, you mean?

Q. Approved.

A. Sometimes they are and sometimes not. As a rule they are approved, yes, sir.

Q. As a rule, they are approved,—your recommendations?

A. Yes, sir.

Q. I asked you about the signature of Mr. Finlay,—do you know the signature of Mr. Pierce?

A. No, sir; I don't think I would know it.

(That's all).

Cross-examination.

(By Mr. ODELL:)

Q. Mr. Cahoon, can you give us the date—the exact date—you became District Manager for the Company's Central Division of Texas?

A. January 1, 1903.

Q. Now, can you give the date when you became the Assistant

Manager or Assistant to the Manager, or whatever your position was, in that territory?

A. I went to Dallas on April 1, 1893, as the Assistant to the Manager, and I held various positions of different titles, but I was practically his Assistant from that time on.

Q. You were then with the Company at the time the Eagle Refining Company, as conducted, that is, the oil business,—as conducted by the witness A. W. Clem, was purchased by the Waters Pierce Oil Company?

A. I don't know the date of the purchase, but I was with the Company then, yes, sir.

Q. Well, now, prior to your going to Dallas, I believe you had been with the Company many years?

A. Yes, sir; I was at Houston four years, and Galveston
1340 one year,—about one year,—prior to going to Dallas.

Q. You testified this afternoon with reference to the reorganization of the Company, the dissolution of the old company, and the organization of the new one. You were asked many questions with reference to whether there was any change in the method of doing business after the dissolution of the old company and the organization of the present company. I believe you said that the business was conducted practically as it had been before.

A. Yes, sir.

Q. The physical properties of the present company remained in the same condition that they were maintained by the old company?

A. Yes, sir.

Q. There was no change of name of the company?

A. No, sir.

Q. The new company retained the old employees,—most of them?

A. Yes, sir.

Q. Paid them the same salaries?

A. Yes, sir.

Q. The tank-wagons, the stationery, that was not changed substantially, that is, the brands or the labels on the cars and on the company's property, the tank-wagons?

A. No, sir, there was no change in the wagons or any of the physical property.

Q. Mr. Cahoon, there was no effort at any time, of concealment on the part of the new company, was there?

A. Absolutely none to my knowledge; no, sir. Everything was, so far as I could judge, open and above board.

Q. Yes, sir. There was no effort, so far as you were concerned, or the employees under you, of misleading or deceiving the public with reference to the new company, or the present company carrying on substantially the same kind of business that the old company did?

1341 A. No, sir, there was not.

Q. Well, when you were asked this afternoon about the methods,—whether they were the same or not,—in order that it may get into the record and may enlighten the Jury and the Court,—any oil company, about what are its methods of doing business, that is, a marketing company such as the Waters Pierce Oil Company is?

How does it transact its business; get its oil to the consumers and to the customers?

A. Well, the oil is shipped to the various stations in bulk in tank-cars, and the very large percentage of deliveries are made by tank-wagons; in some territory practically all by tank-wagons. We not only deliver to the local trade that way, but in many places we deliver to every little town within a radius of fifteen and sometimes twenty miles of the central station, and the oil is measured into the country merchant's tank just as in the city.

Q. Now, having in mind the questions that have been propounded to you by State's counsel, with reference to whether there had been any change in the method of doing business,—was there any change that could have been made, Mr. Cahoon, to carry on successfully an oil business?

A. I don't see how they could have made any change and successfully continued to carry the business on.

Q. It was just as necessary for the present company to use tank wagons, as for the old company to use them?

A. Yes, sir.

Q. It was necessary for them to have employees?

A. Yes, sir.

Q. Managers, District Managers, and drivers?

A. Yes, sir.

Q. Necessary for them to have tank stations and tank wagons?

A. Yes, sir.

1342 Q. Tank-wagons?

A. Yes, sir, the new company required absolutely the same kind of equipment to do a successful business, as the old company.

Q. There have been no new methods recently originated or invented with reference to the handling of oil?

A. No, sir.

Q. Of a marketing concern?

A. It is handled very much the same now as it has been, excepting that we are extending our bulk delivery service a little more than a few years ago.

Q. You mean by that, you are sending your tank-wagons further out in the rural districts?

A. Yes, sir.

Q. Delivering oil to the dealer and consumer?

A. We are not selling the consumer. The deliveries are made to the country merchants, and we are covering a much larger territory.

Q. You are using ten-gallon cans?

A. In some places ten-gallon cans are used, and in some places tank-wagons.

Q. Well, you were asked about the stationery,—whether there had been any change in the stationery. I believe you said the present company had printed on it the date of the organization?

A. Yes, sir. The letter-heads do. There may be some forms that do not have that; they are changing continually.

Q. The forms,—the kinds of reports you make to headquarters?

A. Yes, sir.

Q. Well, was there any change that could have been made in the stationery, of benefit or advantage to the new company?

A. Why, none that I know of; it was necessary for us to make reports.

1343 Q. You were required to have paper?

A. Yes, sir.

Q. And some printing on it to facilitate the business?

A. Yes, sir.

Q. Did you, as Manager of the Company, conceal from the public at any time, or the officials, public officials, the kind of stationery that you were using?

—. ——.

Q. Did you undertake at any time to conceal from them the brand on your tank-wagons?

A. No, sir.

Q. Tank-stations?

A. No, sir.

Q. Then, if I understand you correctly, Mr. Cahoon, you have been interrogated about whether the present company changed the method of doing business, you mean to say that the old company,—that the present company simply used those conveniences that made it convenient and practical for them to transact their business?

A. Yes, sir; it would have been impossible for us to have continued doing an oil business without that same equipment.

Q. Yes, sir. Now, this afternoon you were interrogated with reference to the volume of the business done by the company, that is to say, as to the per cent. of the yearly business done by this company in the territory of which you were the District Manager. I believe you said that this company did about eighty or eighty-five per cent. of the business. That was your estimate of it?

A. Yes, sir; approximately eighty per cent., I believe.

Q. Now, Mr. Cahoon, I wish you would explain to the Jury the equipment of this company; its facilities for carrying on an oil business, as distinguished from the equipment and facilities of your competitors in this same territory.

A. The competitor, with possibly one exception, depends
1344 entirely on iron or wood barrels for making the deliveries. If the town is off the railroad the barrels have to be shipped to the nearest railroad point and then hauled out, and the result is there is almost invariably a loss from leakage, while with us the oil is delivered by tank-wagons and measured to the merchant, gallon for gallon, and he pays for it and the transaction ends there. I have always figured on iron or wood barrels a loss from leakage or wastage would be from five to eight per cent., especially in the summer time. By using the tank-wagons we save that, and as a result the average merchant prefers to pay more money when getting it from us, than when getting it in iron barrels.

Q. You speak of the merchant and his tank; about what is the capacity of the average tank that the smaller dealer or merchant has in his house?

A. Approximately sixty gallons.

Q. Now, explain to the Jury the advantage to the merchants of this iron tank filled from time to time from the tank-wagon, as distinguished from the oil carried in the iron barrel or wooden barrel stored in his house.

A. Well, in the first place, where a may buying oil from a tank-wagon, he can get from five gallons up, and where a merchant sells but ten or fifteen or twenty gallons a week, he don't have to carry any stock, buying from tank-wagons as he does from us. If he buys from a competitor in barrels, he has to buy fifty gallons at a time. That's one of the numerous advantages we have over the competitor in supplying the trade.

Q. Now, the oil in barrel, where it is carried by the small dealer or merchant,—how does it ordinarily affect his business, or the goods in the house, with reference to the leakage, and the oil, not only the leakage of the oil, by reason of its being stored there, damage other goods and wares in his house?

1345 A. If the oil is permitted to stand in the house in a barrel, there is almost invariably some leakage on the floor; or in hauling the barrel oil out to the store, the average merchant objects to carrying it with other goods, for the reason that it frequently damages it, flour and sugar especially; and we have a great many cases where merchants prefer to pay two or three cents more a gallon and have it hauled out, than he would f. o. b. the railroad station, where it is shipped to him on that account; and then again, oil is bad to handle at the best,—a clerk in the store handling other goods, objects to pumping out of barrels. The idea is where they buy in barrels they have to transfer from the barrel into a tank; that takes time, and there is more or less wastage; and then the merchant has to haul the barrel back and ship it to the company *be* bought from. All of which is saved where he can buy from tank wagons.

Q. Isn't it true that the average retail merchant insists at this day and time on getting his oil delivered in one of these tanks that you have described, from the tank-wagon?

A. A large majority do, yes, sir. In fact, I have undertaken bulk deliveries where I felt later I could not afford to continue them, and the merchant, just as soon as we stopped the trips, began to insist on our making them again.

Q. Isn't it true again, Mr. Cahoon, that as a rule that you charge more for your oil delivered as you have described your deliveries, than the dealer would have to pay for the oil, if he wanted it in the old way, in an iron or wooden barrel?

A. In a large majority of cases, yes, sir.

Q. And is not that the secret of your being able to maintain your prices?

A. It is due entirely to the bulk delivery system, as I see it, and the grade of oil that we are furnishing, also.

1346 Q. Now, approximate as nearly as you can, about how many tank-wagons you have in your territory.

A. I should say we were operating in my territory eighty-five wagons, that is, tank-wagons or can-wagons, either owned by the

company or owned by the commission agent. In the latter case, we provide the cans and he provides the wagon and teams.

Q. About how long has this system prevailed,—of going to the country and supplying the merchants and dealers with tank-wagons?

A. As near as I remember, we first began spreading out the matter of making bulk deliveries some seven years ago, and we have gradually built it up.

Q. Well, are you increasing your equipment in that respect year after year,—covering more territory and reaching more dealers in remote localities?

A. Yes, sir. Our idea is to cover just as large a territory as we can possibly reach.

Q. Very well. Now you have estimated the number of tank wagons that you have in the territory that you supervise or superintend for the company. I wish you would estimate as nearly as you can about how many tank-wagons the combined opposition to the Waters Pierce Oil Company has in the same territory.

A. I would say approximately ten. They are making no country delivery, however, with the exception of a few trips out of Dallas.

Q. Now, about how many counties in Texas in your Division?

A. I declare I do not know.

Q. Well, approximate it, so as to give us an idea of the territory now.

A. My territory starts at the Red River and goes south on a line with Temple.

Q. On a line with Temple?

A. A line running East approximately; a line running East and West below Temple.

1347 Q. How far west do you go?

A. To Pecos and San Angelo.

Q. Well, you cover substantially one half of the State don't you?

A. I should judge very near one half; yes, sir. In population at least.

Q. In population?

A. Yes, sir.

Q. Now, do I understand you to say that aside from some deliveries that are made outside of the city of Dallas, that the defendant here is the only company that undertakes to cover that great territory with its tank-wagons, and to deliver to the dealers in rural districts off the railroads, oil from the tank-car——

A. From the tank-wagons.

Q. Tank-wagons, I mean?

A. Yes, sir, in my territory.

Q. Now, what is your equipment, that is, the equipment of the defendant, at the railroad centers or the distributing centers, as compared with your competitors?

A. Our plants are much larger; we carry much heavier stock.

Q. Now, very well. For instance, in your territory, where are your distributing centers?

A. Very well, take Fort Worth, for instance.

Q. What is the capacity there of your tanks?

A. As I recollect it, we have seventeen storage tanks and a large warehouse, some sixteen head of stock, and about eight men, eight or nine men; while our one,—one of our competitors has three little, very small, storage tanks.

Q. Now, the capacity of your tanks, what are they?

A. They vary, from the largest, having a capacity of about twenty thousand gallons, and the smallest will hold one tank car.

Q. What is the gross capacity, that is, of all of them?

A. All of them together?

1348 Q. Yes.

A. Approximately one hundred and seventy-five thousand gallons, I should say; I don't know exactly.

Q. Then you have a large warehouse, you say?

A. Yes, sir.

Q. Now, what do you keep in the warehouse,—the oil in cans and cases?

A. We carry a large stock of lubricating oil, candles, specialty goods and an immense variety of stock of all kinds.

Q. You have eight employees, you said?

Q. Nine or ten men I said, but I think there are nine, possibly ten.

Q. All right. Now, from your knowledge of the capacity of your competitors—competitors of this company in Fort Worth, that is, estimating all of them together,—about what is their storage capacity in Fort Worth of oil in bulk?

A. I should say about fifty thousand gallons, all of the competitors that are actively operating at the present time.

Q. Yes, sir. Well now where is another distributing point?

A. Dallas. Dallas is a large distributing point.

Q. Well, about what is your gross capacity of bulk oil in Dallas?

A. I should say about one hundred and twenty-five thousand gallons.

Q. Now, the competitors of the defendant in Dallas, about what is their gross capacity in bulk oil?

A. I am not familiar with the storage of the one competitor who is operating there. I should——

Q. You can approximate it then?

A. No, sir; I could not even give you an approximate idea.

Q. Well, your tank-wagons in Dallas,—how many do you have?

A. We operate three in the city and one in the country from Dallas.

Q. Have you any other distributing point in your territory?

A. We have Paris. Paris is quite a large distributing

1349 point. We operate three wagons in the country and one in the city there. At Sherman we operate one in the city and one in the country.

Q. Well, take your storage capacity in Paris for bulk oil, about what is it?

A. Little less than fifty thousand gallons.

Q. Do you know what the capacity of the opposition to your company is in Paris?

A. They have, I think, three storage tanks with an approximate capacity of ten thousand each—thirty thousand gallons.

Q. They operate no wagons in the country there?

A. No, sir.

Q. And you operate three?

A. Three, yes, sir.

Q. Well, at Sherman, what is your storage capacity for bulk oil?

A. When our plant will be completed, when it is completed, we will have about seventy-five thousand gallon storage; we are rebuilding it now.

Q. And how many tank-wagons do you have operating in the country?

A. We operate one in the country and one in the city. In speaking of tank-wagons, I refer to can-wagons as well. They are operated in the same way.

Q. Now, Mr. Cahoon, I wish you would state whether or not your equipment and your supplies of oil of various kinds, is and has been such that you have always been able to fill your orders promptly?

A. With very rare exceptions, we have always been. Occasionally we run out of stock at small stations, but that rarely happens.

Q. And if you do run out of stock at one of the small stations, you supply them from these distributing points in Texas?

A. Yes, sir, we supply them from the nearest stock station.

Q. And on short notice?

A. Yes, sir.

1350 Q. Now, what has been your observation as to whether the competitors of the Waters Pierce Oil Company were always able to fill their orders promptly?

A. Well, so far as I know, they have been able to do fairly well in filling their orders. I am not posted, however, as to how well they have kept in stock.

Q. Mr. Cahoon, since 1900, what has been the policy of the defendant Waters Pierce Oil Company with reference to cutting prices on oil?

A. It has not been their policy to cut prices on oil until it became a question of meeting a competitor's price or permanently losing the trade.

Q. Well, in meeting the competitor's price, have you reduced your price to his level?

A. Occasionally we do; as a rule we do not.

Q. Your service is such, then, that you can maintain a slightly higher price than the competitor?

A. Yes, sir.

Q. Well, state whether or not you have cut under the competitor?

A. I don't recall a single instance where we have knowingly done that. I will qualify that to the extent of stating that in allowing a jobber a discount, our price, our net price, might possibly be as low or lower, or a fraction lower, but I would have no means of knowing about that.

Q. I understand. I will get to the jobber in a minute. I understood you to say that where you had your tank wagons, you delivered oil in quantities or from five gallons up.

A. Yes, sir.

Q. Now, take the small dealer, Mr. Cahoon, as compared with the jobber. I wish you would explain to the Jury the cost to the company of delivering oil to the small dealer in smaller quantities as compared with delivering oil to the jobber in large quantities.

1351 A. Well, the larger the quantity of oil you can deliver at one time, the less the expense. We have many customers in the larger cities especially, that will buy five gallons at a time, and expect you to call on them once, twice or possibly three times in a day, while, if they would take a hundred galls., why, one trip, would possibly answer them for three or four days. That has grown to such an extent that in Dallas it forced us to put on an extra tank-wagon part of the time in the winter season to help out.

Q. Well, of course, in maintaining a tank-wagon service and making these deliveries in small quantities it cost- you more to deliver your oil to the small dealer than it does to the jobber?

A. Yes, sir, considerably more.

Q. And you take that into account, do you, in granting concessions to the jobber?

A. That is considered, yes, sir; and we also have in mind the fact that where we are selling a jobber, he is having his traveling men work the territory, and it relieves us of the expense of working the territory, and the jobber carries his accounts and sometimes does not get his money for sixty or ninety days, or until fall, and that is a great advantage to us to have an advantage of that kind.

Q. Since we are talking of the jobbers and those advantages, I will take up this Rotan Grocery Company matter. Do you remember a letter that you wrote to Mr. Ackert with reference to making some concessions to the Rotan Grocery Company of Waco?

A. Yes, sir.

Q. Now tell the Jury something about the Rotan Grocery Company, as to the character of business they carry on, the number of men,—drummers,—they have on the road and about the territory they cover.

A. Well, the Rotan Grocery Company are doing a very extensive wholesale business, with houses, if I recall right, at Waco, Temple, Hillsboro, Dublin, Cameron and possibly one other town.

1352 Q. Comanche?

A. I am not sure whether they have a house at Comanche or not. They travel I presume three or four men at least out of each house, on an average, and work their territory every week.

Q. Well, estimate about the number of men they have on the road.

A. I would say that an average of four men to the house would be very conservative. Traveling salesmen is what you have reference to?

Q. Yes, sir.

A. Yes, sir.

Q. Well, about twenty—then—would be a conservative estimate?

A. Yes, sir, I should think so.

Q. Well, now the territory they cover,—describe that with reference to its area and the population.

A. Well, they cover a very large and thickly settled territory, and, as stated before, many parts of it are worked every week. If we undertook to work it, it would necessitate our having more men than we have now, and then we could not work it as thoroughly as they do. I speak now of the territory we cannot reach by tank-wagons,—the barrel territory.

Q. Now explain to the Jury how these traveling salesmen from the Rotan Grocery Company relieve the defendant of the expense of advertising and getting to the trade the oils of this company.

A. San Angelo would be, probably, a good example of the advantages of dealing through the jobber. We supply a territory from there, I judge, a hundred to a hundred and fifty miles out. The jobber's salesman works the outlying towns every two or three weeks at a very heavy expense and solicits our orders for all of the lines we handle, not only refined oil, but many other grades of goods, and thereby saves us the expense of soliciting the trade.

Q. Now, in addition to saving you the expense of reaching
1353 this trade, state what their facilities are, that is, representatives and traveling salesmen of the Rotan Grocery Company, of introducing your oils, as distinguished from a stranger.

A. Well, the average grocery traveling salesman has a very extensive traveling acquaintance and stands close to the merchant.

Q. Extends credit to them?

A. Extends credit to them. His house many times carries them from June to the first of October, which places them in a position to extend courtesies to the retail merchant that we could not extend to them.

Q. Now explain to the Jury whether or not the Rotan Grocery Company, for instance, in handling your oils, whether they account to the company for that, that is, whether they pay for it, or do you look to the merchant?

A. We look to the Rotan Grocery Company.

Q. They pay your accounts?

A. Yes, sir, regardless of whether they have collected for the oil or not.

Q. Well, now, as the result of this saving to the Company in the many ways that you have described,—I understand that you give this concession in price to the Rotan Grocery Company?

A. Yes, sir.

Q. Now, there is a letter about some wholesale grocery concern at San Angelo, isn't there?

A. The Walker-Smith Grocery Company, at San Angelo, yes, sir.

Mr. BRADY: At Brownwood.

A. Yes, sir, Brownwood.

Q. Without going into the details again, and consuming time,—I wish you would state to the Jury whether or not this concession that was called to your attention, or this recommendation in the letter offered in evidence, was based on the same principles and grew out
of the same conditon of facts that the Rotan Grocery
1354 Company did.

A. Yes, sir, it was very much the same kind of a proposi-

tion. We lost their trade because they claimed that we offered oil at lower prices, and objected to our extending our country tank-wagon service to the retail merchant,—interfering with their making the sales, and the result was that we had to,—in order to hold our trade,—we had to travel the country much more thoroughly with our own man than previously, and it made it necessary for me to place two men in the territory I had formerly covered with one man; and afterwards they found—it was so stated to me—their arrangement not entirely satisfactory, and I am under the impression it was at their own request, their own suggestion, that they came back to us and accepted the arrangement we offered.

Q. Mr. Cahoon, you testified this afternoon about Eupion Oil. I believe P. W. that is Prime White oil?

A. Yes, sir.

Q. Brilliant Oil and S.W., or Standard White?

A. Yes, sir.

Q. Well now, this brand or name, "Eupion Oil", is that or not a trade-mark of the Waters Pierce Oil Company?

A. It is my understanding that it is a trade-mark brand.

Q. No other concern within your knowledge sells oil under the name of Eupion Oil?

A. No, sir.

Q. Well now, all right——

A. Excepting that they buy it from us.

Q. Yes, sir. Very well. Well now, Eupion Oil,—what distinguishes Eupion Oil from Prime White or Standard White or Brilliant or the other oils?

A. Well, Prime White, Standard White and Water White are refinery terms, while the Eupion Oil is a trade-mark brand that
1355 has been advertised for many years, at considerable expense; is well known by everyone, and called for by many customers. That in itself helps to hold the trade on it.

Q. Well, all right. That isn't exactly what I wanted to get at. Now, is it not true that as far as Eupion Oil is concerned, that it is bought at many different refineries,—the oil is?

A. It is shipped to us from a number of different refineries.

Q. That just simply means that it is the high-grade oil turned out by those refineries?

A. Yes, sir.

Q. In other words, it is the best grade?

A. Yes, sir.

Q. Like the best grade of flour from mills?

A. Yes, sir.

Q. And when this oil is purchased at the refinery by the Waters Pierce Oil Company, the Eupion brand goes on the high grade oil?

A. Yes, sir.

Q. Well now, Mr. Cahoon, you speak about Eupion Oil being advertised well, being known to the consumers generally, or by very many of them. Now, as a high grade and first-class oil, tell the Jury whether or not the reputation of that oil has anything to do with your ability to maintain prices and to sell such a large quantity of oil as you do?

A. The reputation of the oil is of very material assistance to us in holding the trade at the prices we do.

Q. Well now, after Eupion, what is the next best grade of oil?

A. We only market—we market an oil under the brand of Extra Headlight.

Q. Now there was some testimony about oil called Brilliant.

A. That is a common term applied to the low grade oils.

Q. And there is a difference, I believe, of three or four cents a gallon?

1356 A. From——

Q. Between the marketing price of Eupion and the Brilliant oil?

A. Yes, sir.

Q. You sell much more of the Eupion than of the Brilliant?

A. Almost entirely Eupion in my territory, yes, sir.

Q. Isn't it true that you sell ten barrels of the Eupion Oil to where you sell one of the Brilliant?

A. That is just about the proportion,—about ninety per cent. Eupion.

Q. Mr. Cahoon, in discussing what were called "rebates" this afternoon, or concessions, evidenced in these letters that were exhibited to you, or read in your hearing, I wish you would state whether or not your competitor granted rebates and made concessions to jobbers and other large dealers in oil?

A. We have been advised many times by the merchants that the competitor has offered them rebates.

Q. Mr. Cahoon, getting back to the jobber for a minute,—what does you company handle aside from Oil, what do they market?

A. Lubricating oils, axle grease, candles, paraffine wax, oil cans, harness oil, and a large line of specialty goods, stoves, lamps——

Q. Oil stoves?

A. Oil stoves, oil heaters, and a large line of lamps.

Q. Now, these jobbers, would they handle all classes of your goods?

A. Not all; they handle quite a number of items a wholesale grocery house would handle; some lubricating oil, axle grease, candles, possibly a little paraffine wax, and odds and ends in the specialty lines.

Q. How many tank-stations have you in your territory?

A. My recollection is now that it is 102; I will have 109 within a very short time.

1357 Q. Now describe to the Jury what you mean by tank-stations.

A. A tank station consists of a small warehouse or a warehouse large enough to enable us to carry a sufficient stock of axle grease and package goods to supply the trade, one or two storage tanks, with a capacity of from ten to twenty thousand gallons, the pipe connections, the ten-gallon delivery cans,—go to make up the station.

Q. Now, these storage tanks that you spoke of,—they are ordinarily built alongside of the railroad track?

A. Yes, sir.

Q. And the oil is emptied from a tank-car into the storage tanks?

A. Yes, sir.

Q. Well, now, getting back to—you say you have 102 of those tank stations in your territory?

A. That is my recollection, yes, sir.

Q. About how many storage tanks do your competitors operate in the same station—their stations?

A. How many tank stations?

Q. Yes, sir, tank stations.

A. Approximately twelve, large and small.

Q. Yes. Twelve as against more than a hundred.

A. Yes. Those figures are approximate; I would not be positive.

Q. Now, you distribute in this territory there by tank wagon or milk can, or oil can, from all of these 102 stations, do you not?

A. All but two or three; there are two or three stations in the extreme west where we are not doing it.

Q. Now, by this particular method you have described, of delivery from tank-wagons, I mean by the tank-wagon, and what is called the oil milk-can method, is it not true that about, that is, approximately seventy-eight per cent. of the company's business in this territory that you superintend*ent,* is done in that—by that method?

1358 A. Just about that percentage, yes, sir.

Q. Then this seventy-eight per cent. of the company's business in this territory comes to them by reason of these extraordinary facilities they have for the delivery of oil, as compared with your competitor?

A. That influences the trade to a very considerable extent; other reasons why it is held, are: It is worked aggressively by our traveling salesmen and agents; every possible courtesy is extended to merchants, in addition to keeping them well supplied.

Q. Mr. Cahoon, about how many agents and employees have you in your territory?

A. It is rather difficult to say without figuring it up. Commissioned and salaried together, I should say approximately from 165 to 175—165 possibly.

Q. Is that agents or employees?

A. Employees.

Q. Well, how many agents have you?

A. We have 102; each station has an agent.

Q. You have an agent at each station, of course?

A. Yes, sir.

Q. Now, you spoke about courtesies extended to merchants in delivering oil from your tank-wagons. How is it measured, as to whether or not gallon for gallon?

A. We are furnished with standard five-gallon measures that are used for delivering oil from the wagon, and it is drawn from the rear of the wagon and measured into the merchant's tank in that way.

Q. He gets then every gallon he pays for?

A. Yes, sir.

Q. Now, what method do you take to protect the merchant and

see that he gets full measure,—the dealer? Have you any
1359 system of checking against the driver to see that the customer has been protected?

A. Yes, sir, we provide the driver with what we call "tank-wagon tickets," that he makes in duplicate,—one copy for the merchant, and one copy for us. In order to insure the merchant always getting what he pays for, we frequently have our traveling salesmen to look over these tickets as they find them in the merchants' stores; they take a memorandum of the numbers on them and compare them with the numbers in our office, so as to see that they are the same. Occasionally we find where a merchant has paid for fifty gallons, his copy reads fifty and our copy reads forty. Those are rare cases, but we continuously are on the look-out, in order to protect the merchant and see that he gets what he pays for.

Q. Mr. Cahoon, do you know A. W. Clem?

A. Slightly, yes, sir.

Q. How long have you known Mr. Clem?

A. Why, I am under the impression that I met him some six or eight years ago.

Q. Do you remember the circumstances of the trial of the Hathaway case in McLennan County in 1895 or 1896?

A. Yes, sir.

Q. More than ten years ago?

A. Yes, sir.

Q. Mr. Cahoon, I wish you would state to the Jury whether or not after the trial of the Hathaway case, it was generally known that A. W. Clem was merely a manager and agent of the Waters Pierce Oil Company in selling oil?

A. My recollection is that at that time these facts were stated in every newspaper, continuously, and a large majority of the merchants knew it.

1360 Q. Do you know anything about—you heard Mr. Clem's testimony, did you not?

A. Only a part of it; I——

Q. Do you know anything about a sign that was sent to Clem at Dallas, in 1900?

A. I have seen the sign, yes sir.

Q. That was sent for him?

A. Yes, sir.

Q. Do you know what instructions he had with reference to that sign?

A. No, sir, I had no means of knowing anything about his instructions.

Q. You didn't see the instructions?

A. No, sir.

Q. Mr. Cahoon,—how many competitors have you at Dallas?

A. Of all kinds?

Q. Yes.

A. Three.

Q. Name them.

A. Clem Oil Company, the Oriental Oil Company and the Independent Oil Company.

Q. About how long have they been operating there?

A. The Oriental Oil Company have been in business five or six years, I think. I don't recall when Mr. Clem went into business; I am under the impression it was about 1903; and the Independant Oil Company only opened up about thirty days ago. In addition, however, I omitted to state another one,—the Bonner Oil Company, which is maintaining a stock in Dallas, as well.

Q. Have these companies any connection with the Waters Pierce Oil Company?

A. Absolutely none to my knowledge.

1361 Q. What about the Gulf Refining Company; do they sell oil in Dallas,

A. Not to the retail trade, no, sir.

Q. Well, do they sell it to these oil jobbers there?

A. Yes, sir, I have understood that they sold the Clem Oil Company and also some to the Oriental Oil Company.

Q. Now, the Richardson-Gay Company; do they operate in Dallas?

A. No, sir, not direct.

Q. Well, do they sell to the jobber?

A. It is my understanding that they sell some oil to Mr. Clem and the Oriental.

Q. Now, the Southwestern Oil Company; how long did it operate in Dallas?

A. I don't remember when they opened up; it must have been six or seven years.

Q. Well, did they undertake to do a general oil business?

A. Yes, sir.

Q. Has there been at any time since May 30, 1900, Mr. Cahoon, that you haven't had aggressive, active competition in the oil business that you supervise for the defendant?

A. We have had active competition ever since I have been connected with the business in Dallas.

Q. Well now, at Fort Worth; what competition have you there?

A. The Gulf Refining Company are operating a plant, and the Muskogee Refining Company,—two competitors.

Q. Any others?

A. There is another concern that carries a little lubricating stock there, yes, sir.

Q. Well, what is it?

A. George Hensler, I think, is the style of the firm.

Q. Now, the Gulf and the Muskogee Refining Companies,

1362 how long have they been operating in Fort Worth?

A. The Muskogee Refining Company has been operating a little less than sixty days; the Gulf Refining Company has been operating for, I presume, two years,—close to it.

Q. You speak of the Muskogee Refining Company,—is that of Muskogee, Indian Territory?

A. Yes, sir.

Q. Well, at Paris, what competition have you there?

A. The Gulf Refining Company.

Q. Well, Sherman?

A. The Gulf Refining Company, and the Southwestern Oil Company had a plant there; also the Independent Oil Company.

Q. Denison?

A. The Richardson-Gay Oil Company have a plant at Denison.

Q. Greenville?

A. The Climax Ink and Oil Company have a plant at Greenville.

Q. Waco; that's in your territory, isn't it?

A. The Climax Ink and Oil Company carry a stock at Waco.

Q. Temple?

A. There is no stock of competitive oil carried at Temple at the present time; the Southwestern were operating there.

Q. How long did they operate there?

A. I should judge six or seven years.

Q. Well, do those companies sell there in barrels, if they find a customer who wants it in barrels?

A. You say the Waters Pierce Oil Company?

Q. No, I say other companies.

A. Oh, yes, quite frequently it is in barrels.

Q. And at Gainesville, what stations are there?

A. No tank stations there; the Gulf Refining Company sells barrel oil.

Q. At Cleburne?

1363 A. It is shipped from Dallas and Fort Worth.

Q. They have no tank station?

A. No, sir.

Q. You were asked to-day with reference to competition being more active and aggressive for the last year or two than it had been, were you not?

A. Yes, sir.

Q. Now, in that connection, is it not true that there have been many discoveries of oil in the Indian Territory, that is, the Muskogee field, and other points in the Indian Territory and in Kansas and in Texas, and in Arkansas,—the last two or three years; and doesn't that account for the activities or so very many independent concerns, especially those that undertake to supply the trade in barrels?

A. That accounts for several of them entirely, yes, sir.

Q. The oil discoveries in the Indian Territory have been so great, the field so productive for the last year or two, that they are building a pipe line from the Indian Territory, through Texas, to the Gulf, are they not?

A. That is my understanding, yes, sir.

Q. *B* I think I asked this question, but I don't want to be mistaken about it. Mr. Cahoon, in this territory that you supervise for the defendant,—state whether or not you reach every town, hamlet and village with your tank-wagons and with your cans in delivering to the dealers.

A. We come just as near it as possible, yes, sir. Wherever we can make a trip within a day, or some within two days, we make them.

We have a number of trips where it is necessary for the wagon to stay out over night.

(That's all).

1364 Redirect examination.

(By Mr. Batts:)

Q. You say there have been enormous discoveries of oil in the Indian Territory?

A. Yes, sir.

Q. And enormous discoveries in Texas?

A. Yes, sir, that is my understanding.

Q. What has been the result, so far as the Texas consumers are concerned? Has it decreased the price of oil?

A. I don't know that it has to any material extent; it has lowered the price of naphtha and gasoline for engine use.

Q. Well, with regard to refined oil and oils that are ordinarily used by the people of Texas; do they or not pay as much for oil now as they did before the great deposits in the Indian Territory were discovered and the great deposits in Texas were discovered?

A. I would say there was no marked difference.

Q. It is a fact that for a long time in Texas there was produced as much as—more than 100,000 barrels of oil a day?

A. I am not personally familiar with that.

Q. Well, you know that as well as you know a great number of things you have testified to?

A. I presume so.

Q. You know that over 100,000 barrels—that would be how many gallons a day?

A. Barrels of crude oil?

Q. Yes, sir.

A. Four million gallons.

Q. The enormous deposits in the Indian Territory and in different parts of Texas is just as much as it ever was?

A. Very small percentage of that crude oil is refined.

Q. Well, while we are on that, tell me how much is refined

1365 in Texas now.

A. I don't know.

Q. Well, you can make an estimate?

A. Only a small part of it is refined oil because the crude oil only produces a limited amount of refined, as I understand it.

Q. I will ask you if it isn't a fact that there are more than 20,000 barrels of oil a day refined in Texas?

A. I don't know; I am not familiar with the South Texas refineries at all.

Q. Well, you know that the Security Company has got a very large refinery near Beaumont, don't you?

A. I have heard so.

Q. Well, what have you heard the capacity of that to be?

A. I don't know; don't recall having heard it.

Q. Don't you know its capacity is 15,000 barrels a day?

A. I don't know it.

Q. Well, have you had any information to that effect?

A. I don't recollect.

Q. You keep in touch with the oil situation as Manager of the Texas Division of the Waters Pierce Oil Company?

A. I get a very large percentage of my refined oil, have been recently from the North, North and Corsicana; I get very little from South Texas, and am not familiar with that.

Q. Well, you don't mean to tell me that as an oil man you have no idea of the output of the refineries of Texas?

A. I have no idea of the output of the refineries in South Texas.

Q. Well, up until very recently your principal supply came from Chaison, the Security Oil Company's refinery?

A. No, sir.

Q. You stated so this afternoon, did you not?

A. No, sir.

1363 Q. And from Neodesha?

A. From Corsicana and Neodesha.

Q. Up to about two months ago?

A. Well, state that question again and let me understand it.

Q. I say didn't you state that up to about two months ago your principal oil supply came from Chaison, the Security Oil Company's station, and Neodesha, Kansas?

A. I didn't intentionally say that; a big percentage of the refined oil came from Chaison and large percentage came from Neodesha.

Q. You knew of the existence of these refineries in Texas?

A. Yes, sir.

Q. And has the Gulf Refining Company a refinery?

A. Yes, sir, I have been told they have.

Q. The Texas company have a refinery?

A. Yes, sir.

Q. Security Company a refinery?

A. Yes, sir.

Q. And the concern at Corsicana, whose output you received?

A. Yes, sir.

Q. Now, all of those except the Corsicana refinery have been established in the last five years, have they not?

A. Yes, sir.

Q. And notwithstanding that, you say there has been no decrease in the price of oil to the people of Texas?

A. No, I don't know, couldn't state positively, but I don't think there is any material difference.

Q. Now, you stated that you go into every hamlet and town, something of the sort; you don't go anywhere where the jobber does his business do you?

A. Yes, sir.

Q. You told us before that you utilized the jobber to at-

1367 tend to the business; that that cut down your expenses, and you didn't have to keep a man there? You don't do anything where the Rotan Grocery Company does business?

A. Yes, sir.

Q. Then you are mistaken when you say you didn't ha[illegible] to maintain men in their section?

Mr. ODELL: We insist that that is an argument; the witness didn't make that statement.

Mr. BATTS: Counsel made the statement, but the witness acquiesced in it.

Mr. ODELL: Counsel didn't make it, and it is an argument and a re-examination of the witness.

Mr. BATTS: Cross examination on new matter.

Mr. ODELL: He is their witness, and it is asking for conclusions, and is an argument.

The COURT: The objections are overruled.

Mr. ODELL: Defendant excepts.

Q. Now, I understand you to have said that you utilized the jobbers to attend to this business for you, and they saved you any necessity for sending men into that territory and that thereby you can give them a very extraordinary rate,—is that what you now state?

A. I said, as I recall it, that the jobber worked the towns and supplied that business, but not our tank-wagon towns.

Q. Then as to the business you have got established, the jobbers don't affect it at all?

A. Not our tank wagon deliveries.

Q. Then in territory that you haven't got tank-wagons, you don't undertake to work that country?

A. We don't work it with our men as thoroughly as we would otherwise.

1368 Q. But I understood you to say that you didn't have to have any men in there at all. You still maintain men in there?

A. I said we didn't have to work it as often as we did otherwise.

Q. Well, that is the extent to which you now go,—that you don't work it as often, don't have to work it as much.

A. We don't work it as often as we would if we were not selling to the jobber.

Q. Now, so far as these jobbers are concerned and these people that they serve, you have no peculiar facilities for selling to jobbers?

A. Only the advantage of having the stocks distributed over the territory, making it convenient for them to get their supplies.

Q. Well, take the Rotan Grocery Company, does it depend upon your local tank wagons to supply its demands?

A. I don't understand you.

Q. You sell to the Rotan Grocery Company. You say it has got five or six or seven places in Texas and they employ a great many salesmen in Texas. Now, in your sales to the Rotan Grocery Co., do you sell to them in car load lots, or how?

A. We sell them what they buy in single barrel lots just as they want it.

Q. Delivered where?

A. At whatever point they want to draw it from.

Q. To them or to their customers?

A. To them; they do the shipping out.

Q. And do they have any tank wagons to deliver?
A. No, sir.
Q. Then these persons whom they serve have to get it in barrels?
A. Iron barrels, yes, sir.
Q. And stand the loss that you say results from the use of iron barrels?
A. Yes, sir.
1369 Q. Those people do?
A. Yes, sir.
Q. Then so far as that particular trade is concerned, the Rotan Grocery Company isn't in a better position than these other people that have nothing except barrels, are they?
A. I don't understand the question.
Q. I say are the Rotan Grocery Company in any better position to handle that trade than your other competitors who have only iron barrels?
A. Why certainly, the people are in better position to handle it; they are carrying the merchants and extending them a line of goods which influences the trade.
Q. Now, you sell to jobbers where you can do so?
A. Yes, sir.
Q. And you give them the same prices?
A. Not necessarily, no sir.
Q. Those cuts to these particular persons mentioned in these letters here?
A. Well, cuts to the prices that you give to jobbers ordinarily; ten per cent. is the ordinary jobber's discount.
Q. You asked for a special price to certain jobbers. You are given a general price to supply to all jobbers, are you not?
A. No, sir.
Q. You are not?
A. No, sir; I have no jobber's price.
Q. You have no jobber's price?
A. No, sir.
Q. Then the price that jobbers ordinarily get is exactly the same as you would give to any other merchant?
A. Yes, sir, less the discount that is allowed to him.
Q. Is there a regular discount allowed, or do you get a
1370 special discount from St. Louis?
A. It has always been customary for our St. Louis office to pass on each individual case as it came up.
Q. Now, the Rotan Grocery Company, you had their territory pretty well covered with your tank wagons, did you not?
A. Yes, sir.
Q. You covered the same territory that the Rotan Grocery Company barrel order transfers do?
A. Yes, sir, the tank-wagon transfers do.
Q. You go right into the territory that they go into?
A. Yes, sir, except a few outlying towns that we don't reach with the wagon, can't reach them.
Q. Now, as I understand you, you have one hundred and two stations?

A. That is my recollection; approximately that.
Q. One hundred and two storage tanks, or more?
A. More than that, two or three times that much.
Q. Two or three times that many tanks?
A. Yes, sir.
Q. You have eighty-five delivery wagons, tank delivery wagons?
A. I said that we have about 85; approximately that.
Q. Horses for each of them?
A. Surely.
Q. Equipment for each, harness?
A. In some cases I said the equipment, the wagons and harness and horse were owned by the agent and others we own them ourselves.
Q. You have in addition to that I suppose a large number of iron barrels that are in use in this territory?
A. Yes, sir.
Q. You have gone into every hamlet and established your business there, or substantially every one in your territory?
A. Every one we could get to, yes, sir.
1371 Q. You have a warehouse at all these places?
A. Yes, sir.
Q. Good large part of that has risen since 1900 hasn't it, a good large part of that improvement or that property has been accumulated since the present company went into business,—since 1900?
A. No, sir; if I understand the question right,—a great many of our plants were operated prior to that time.
Q. Well, I don't mean that all of them; I asked you if a large part of them, or a good large part of this property hadn't been accumulated since that time?
A. A large percentage of the property was in existence prior to 1900.
Q. And a large part since that time?
A. Quite a number of plants have been put in since that time, yes, sir.
Q. The business has increased, has more than doubled since you have had charge of it?
A. No, not to that extent.
Q. Well, it has quadrupled since you have been connected with the company?
A. It has undoubtedly increased wonderfully.
Q. All of this property has been accumulated and paid for out of the profits of this concern and six or seven hundred per cent. paid in addition to it in dividends?
A. I don't know what dividends are paid.
Q. All this property accumulated and six or seven hundred per cent. per year paid in addition to that, do you know?
A. I don't know anything about the dividends, the property has been accumulated, certainly.
Q. And you state that you conducted your business upon the basis of the superior quality of your oil, and you further state that Eupion Oil, the name "Eupion Oil" is a representative of the highest
1372 grade of oil made by these refineries—I will ask you if it isn't a fact that you sell any grade of oil whatever as Eupion

Oil that you can, that the demands or requirements of business suggest that you use?

A. No, sir, it is not a fact.

Q. It is not a fact?

A. No, sir.

Q. You didn't sell anything then except the highest grade of oil as Eupion Oil?

A. I am not in position to know what grades of oil are shipped now.

Q. I will ask you then this question,—if you haven't recommended that an inferior oil be shipped as Eupion Oil?

A. I did that one time when we couldn't get anything else.

Q. I will ask you if you haven't recommended that it be shipped for the purpose of recouping from the loss resulting from cutting the price?

A. I don't recall of making such a recommendation.

Q. I will ask you further if you haven't recommended or stated that you would put in Brilliant and sell it at the regular prices and meet your competition in that way, as Eupion Oil, and meet your competition that way?

A. I have no recollection of making such a recommendation; If I did it would certainly be out of the ordinary.

Q. Well, you don't ordinarily do that, then?

A. No, sir.

Q. And you don't ordinarily sell poor oil as Eupion oil?

A. Not knowingly, no, sir.

Q. And you don't ordinarily get S. W. oil at a hundred and fourteen to sell for oil of the one hundred and fifty, don't ordinarily do that?

A. No, sir.

1373 Q. But you sometimes do it?

A. The only time I recollect it is the instance I stated we were out of oil.

Q. Now give me the time that was.

A. I don't remember.

Q. You can't come at that? You stated what it was?

A. I didn't state the date; I would say that it was this past winter a year ago, as near as I can remember; I am not positive, however.

Q. In this case it would be the ordinary course of business for you to have told your customers you didn't have it, would it not?

A. We were forced to tell them we didn't have oil; we run out—quite a number of places.

Q. At that time, when you substituted this poor oil for the good oil, for the high grade oil, and sold it for Eupion, you didn't tell your customers that, did you?

A. The oil was not necessarily bad, the S. W. 112 oil.

Q. It is just as good as the other?

A. No, sir, it isn't as good as the other.

Q. It isn't as good as that which you styled as Eupion oil?

A. No, sir.

Q. Isn't it a fact that your statement to the trade is that your

Eupion Oil is oil of the best quality and better quality than is handled by your competitor?

A. If we had occasion to make the statement——

Q. That is the statement you make?

A. Yes, sir.

Q. Your statement is that Eupion Oil is always high, fine grade of oil?

A. Yes, sir.

Q. And your statement is that that is better oil than S. W. 112?

1374 A. If we had occasion to make the statement, that is what we would state.

Q. That is what you would state if the exigencies of business required?

A. Yes, sir.

Q. It is a fact that you can't sell, except in this State or one or two other States where the people have not been sufficiently protected by law, oil of that grade, S. W. 112?

Mr. ODELL: We object to that as wholly irrelevant and immaterial to any issue in this case, the assumption of what laws are in other States, and it is prejudicial to the defendant in this case.

Mr. BATTS: I expect to show by this witness that in most of the States of this Union, oil of that character cannot——

Mr. ODELL: I object to the statement before the Court and Jury.

Mr. BATTS: Get the Jury out.

Mr. ODELL: I am not running the Court; I am making my objection to the Court. As to what the laws of other States are is wholly irrelevant and immaterial; they can't bind the people of Texas or influence the laws of Texas, and it is prejudicial.

Mr. ALLEN: The evidence is already in.

The COURT: The objection is overruled.

Mr. ODELL: The defendant excepts.

Q. Now, isn't it a fact that some of the oil you have sold in this State as Eupion Oil could not be sold in other States at all on account of its inferior quality?

A. I am not personally familiar with the inspection laws of other States; there are some States where I presume it could not be sold.

1375 Q. Now, in addition to sending S. W. 112 sometimes as Eupion Oil, you also had an inferior quality of Water White 120 shipped as Eupion Oil at one time, did you not?

A. I never knew of an inferior grade of W. W. 120 being shipped intentionally.

Q. Will you explain this then, this letter in which you speak of an order for one tank car of Eupion P. W. 150 for shipment to Stephenville, Texas, and "I will be obliged if you will instruct Agent Angus to ship W. W. 120 on this order".

A. You want to know if the W. W. 120 was an inferior oil?

Q. No, I wanted to have you explain that, if you didn't send out W. W. 120 as P. W. 150?

A. P. W. 150 is an oil that isn't made for sale in Texas, not ordi-

narily sold in Texas, and we were at that time possibly using that oil because we couldn't get any other.

Q. The P. W. is superior to any oil you sell in Texas?

A. No, sir, it is inferior; it is a higher fire test but an inferior compared with Eupion.

Q. Now, talking about S. W. 112, will you explain this letter: "There are some points in Central Texas where we can market it, Corsicana S. W. 112, as Eupion", did you do that?

A. We did it at the time I refer to.

Q. And possibly that was the reason for it?

A. Because we couldn't get the other oil, yes, sir.

Q. And that was the reason that you assign for wanting to do this, to the St. Louis office?

A. It was; my recollection is it was either a question of doing that or getting an oil from South Texas, and at that time they hadn't been able to refine satisfactorily burning oil in South Texas, and I objected to it; that is my recollection; I wouldn't be positive about that, however, S. W. 112 made at Corsicana was a much more satisfactory burning oil than the best oil we could get in South
1376 Texas at that time.

Q. Well now, you couldn't at that time get as good oil as S.W. 112 from Chaison?

A. No, sir.

Q. Security Company?

A. No, sir.

Q. Then you were at that time handling S.W. 112, which is an oil so poor that it can't be sold in some States, and some oil that was inferior even to that to the Texas consumers as Eupion oil?

Mr. ODELL: We object to the question because it is an assumption of what the laws were in other States, not the best evidence of what the law is in other States and the witness isn't shown to be an expert, for the purpose of contradiction on an immaterial and prejudicial issue to the defendant in this case.

The COURT: The objection is overruled.

Mr. ODELL: Defendant excepts.

Q. Is that true?

A. Will you kindly state it again.

Q. I asked you if it wasn't a fact that at that time you were selling S.W. 112 Corsicana oil, *as* poor a quality that it couldn't be sold in some States, and still a more inferior quality made by the Security Oil Company at Chaison, Texas, as Eupion Oil?

A. It is a fact that we sold at that time some Corsicana 112 as Eupion; it was not necessarily a poor grade of oil, however, because if it is properly burned it will give just as satisfactory a light as any *light*, if it is burned in a proper device.

Q. Now the other oil at Chaison was poorer even than that, you say?

A. It didn't give my trade satisfaction.

Q. And those were the two oils you were handling as Eupion Oil for the Texas trade?

A. I don't recall handling over a very few cars of Chaison
1377 oil and that was before I knew—or before we knew that it was unsatisfactory.

Q. You were selling it as Eupion oil?

A. Yes, sir; we sold a few cars of Eupion Oil before we discovered the oil wasn't satisfactory.

Q. And then went from that quality of oil gotten at Chaison and sold as Eupion Oil, to the S.W. 112 gotten at Corsicana?

A. The S.W. 112 was used, as I stated, simply to tide over; we do not now and have never made a practice of substituting knowingly.

Q. Where do you get that Eupion Oil now?

A. I have been getting considerable portion of it from Neodesha, and get some from Corsicana as well.

Q. What is the quality of the oil that you get now at Corsicana, that you use as Eupion?

A. Very satisfactory, so far as I know; occasionally we have a little trouble due to local causes mostly, but as a general proposition it is very satisfactory.

Q. Now, you talked about the changes that were made in the business. You knew the occasion for the re-incorporation of the company, did you not, the fact of the judgment which had been rendered in Texas excluding the Waters Pierce Oil Company from this State?

Mr. ODELL: That is a question of law; we object to it; it is prejudicial to the defendant and not the best evidence.

The COURT: The objection is overruled.

Mr. ODELL: Defendant expects.

Q. Did you know about that?

A. Only from hearsay, newspapers.

Q. Well, you knew about it just as you knew about the fact that Mr. Clem testified at Corsicana, did you not?

A. At Waco?

Q. Yes, sir.

1378 A. Same way, yes, sir.

Q. And you knew that that was the occasion for the re-incorporation of this company?

A. I supposed it was.

Q. Judgment excluding that concern from the State?

A. I supposed it was.

Q. Now, I understand you to say that the only change that you knew of that resulted from that judgment therein rendered by the State of Texas against this concern was that on some of its letter heads the words, "Incorporated May 29, 1900" was put upon some of those letter heads?

A. That was put on as I recall, on all of the letter heads.

Q. That was the only change of any kind that was effected in so far as you know, on account of that judgment of the Court in Texas?

A. Practically so, yes, sir.

Q. Now, you say that everybody knew about the circumstance that Mr. Clem testified at Corsicana that the Eagle Refining Company's business—at Waco—that the Eagle Refining Company's business was the business of the Waters Pierce Oil Company. Will you

tell me why it was then, that thereafter that business was maintained up there?

A. That is something I had nothing to do with; I don't know.

Q. You don't know of any reason then for it being maintained up there, thereafter?

A. I don't know what the reason was.

Q. Two separate establishments there in Dallas?

A. There were two, yes, sir.

Q. Involving unnecessary expense?

A. That is a matter that was handled entirely by our St. Louis office, and one which I know nothing about; I wasn't even manager of the Division at that time.

1379 Q. The Waters Pierce Oil Company was entirely able to take care of the trade there, was it not?

A. In Dallas?

Q. Yes, sir.

A. I should say so, yes, sir.

Q. Capable of it, just as it is now, was it not?

A. Yes, sir, just as capable.

Q. No competition of any sort after that was bought out was there?

A. I don't recall when the Southwestern Oil Company was there, but I think it was along about that time.

Q. After Mr. Clem gave his testimony at Waco, there was no competition there?

A. I don't remember.

Q. The Southwestern Oil Company didn't come in there until 1900, about; did it?

A. I am not sure about when it was.

Q. Then you know of no reason, if everybody knew that the Eagle Refining Company was a part of the Waters Pierce Oil Company, why that business was run independently?

A. No, sir.

Q. Did you know about the fact that the Eagle Refining Company was a part of the Waters Pierce Oil Company prior to the time Mr. Clem gave his testimony?

A. I heard it stated it was, yes, sir.

Q. You didn't know about that?

A. I didn't know positively, no, sir.

Q. No employee of the company knew about it?

A. I understood that it belonged to the Waters Pierce Oil Company, but I had never had any dealings with Mr. Clem.

Q. Never seen any correspondence with them?

A. No, sir, not pertaining to the Eagle Refining Company's business.

1380 Q. You say no effort has been made to conceal the status of things since this was done?

A. No, sir, absolutely none.

Q. You are manager of the Central Texas Division of the Waters Pierce Oil Company in Texas; did you know anything at all about the fact that the Standard Oil Company owned a majority of the stock of the Waters Pierce Oil Company?

A. I think my first information came from the newspapers.
Q. During the last six or eight months?
A. Oh, no, sir.
Q. When did you first get any information about it at all?

Mr. ODELL: We object to the question as to what this witness may have known about the Standard Oil Company's stock as being irrelevant and immaterial to any issue in this case, taking up time unnecessarily.

The COURT: The objection is sustained.

Mr. BATTS: I want to suggest that this is cross examination upon a matter that was brought out new by the defendant; he states no effort was made to conceal anything connected with this concern, and I want to show that——

The COURT: I don't care to hear argument; I don't think there was any statement made about whether there was any effort to conceal the ownership of the stock of the Waters Pierce Oil Company, or about the Clem transaction.

Q. Mr. Cahoon, there is, as far as you know, no patents of any kind on these tank wagons, nothing to keep anybody from getting them?
A. If they have the price.
Q. Now, there have been quite a number of people during the time you have been with the concern at Dallas, have under-
1381 taken to supply the business of the people in your territory have there not?
A. In Dallas proper?
Q. In Dallas and in the territory adjacent to it.
A. There have been several, yes, sir.
Q. They have not lasted long against the competition of your company?
A. Several of them have been in business several years.
Q. Sir?
A. Several of them have been in business five or six years; the Oriental Oil Company, I think, has been in business five years.
Q. The Oriental lasted longer than any of them; the Southwestern has fallen before the competition?
A. It closed up, yes, sir.
Q. Did the Waters Pierce Oil Company buy it?
A. No, sir.
Q. Get any of its property?
A. No, sir, not that I know of; they possibly may have got some of the tank cars, something at the plant.
Q. Did you correspond with the St. Louis office with reference to the acquisition of that property?
A. Yes, sir, I have; I don't know that I did in regard to the Dallas property; I did in regard to the storage tanks at one or two other points.
Q. Now, I will ask you if it isn't a fact that you are advised by the St. Louis office that the negotiations had not been by which they would get charge of the Southern Oil Company's properties?

A. I was advised by the St. Louis office that they were negotiating with them, or had done so, in regard to some tank cars——

Q. Well, that——

Judge PENN: We insist on the counsel allowing the witness to answer.

1382 The WITNESS: In reference to tank cars, but they have sold their plant at Dallas to another concern, as I understand it, and so far as I know the Waters Pierce Oil Company has not purchased the equipment, except a few tank cars, at any point.

Q. The truth is, it was running in opposition up there and it has gotten out of the way, and the negotiations with reference to it were had between Mr. Tilley and the Waters Pierce Oil Company?

A. I don't know who the negotiations were with.

Q. They wrote you to that effect, didn't they?

A. I don't remember, possibly so; I took the matter up in my letters to the St. Louis office.

Q. There is one of them that has fallen. The Eagle Refining Company, the Waters Pierce Oil Company got hold of that concern, didn't it; got it out of business?

A. I understand so, yes sir.

Q. Now what has happened to the Wyse Oil Company's competition in your territory?

A. They are doing practically nothing.

Q. You don't know of your company having any interest in that?

A. No, sir, not to my knowledge.

Q. How long have they been in business?

A. Why, I should say ten years or more.

Q. They have practically been put out of business?

A. The originator of the business is dead; that probably explains their having dropped out.

Q. Well, now, what other concerns have come up during that time and been snowed under?

Judge PENN: We object to that character of examination; this witness was put on the stand by the State and these matters, according to my recollection, were gone over by Mr. Brady, he
1383 is going over the same matters. The questions are put in an offensive manner and involve conclusions that the testimony of this witness doesn't bear out, and we object to this character of examination and ask the Court to require counsel for the State to put his questions in a proper form.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts to the ruling of the Court.

Q. Will you answer the question, Mr. Cahoon?

A. Will you state it again?

(Question read by Stenographer.)

A. Well, I declare I don't remember; there was a concern doing business under the name of Texas Oil Company, I think, at Waco some years ago, and has discontinued business.

Q. Climax Ink & Oil Company, they are still doing business?
A. Yes, sir.
Q. Has the Standard Oil Company undertaken to do business in your territory?
A. In my territory?
Q. Yes.
A. Not to my knowledge.
Q. Not to your knowledge?
A. No, sir.
Q. Do you know anything about its business in any other part of the United States?
A. No, sir.
Q. Do you know whether or not in certain other parts of the United States it has the same character of business and the same character of equipment and doing business in the same sort of way that you are doing in this territory?
A. I have seen plants, riding along on the train, in different parts of the country that were intended for doing a business very similar to ours.
1384 Q. But they have not undertaken to get into this territory at all?
A. Not in my territory.
Q. And you don't know anything about them doing business anywhere in Texas?
A. Not as the Standard Oil Company, no, sir.
Q. Your understanding is they are able to do it, got the money to do it?

A. Mr. ODELL: We object to whether they are able to do it; they are not here doing business.
Mr. BATTS: We withdraw the question.

Q. You don't know of the Corsicana refinery selling any oil to the retail trade, do you?
A. No, sir.
Q. Do they ever sell any to jobbers, at all?
A. Not to my knowledge.
Q. Have you known of the Security Oil Company selling to jobbers?
A. No, sir.

Recross-examination.

(By Mr. ODELL:)

Q. Mr. Cahoon, those letters that you were interrogated about this afternoon; where did they come from, the copies that were exhibited to you this afternoon?
A. They were made in my office.
Q. Who made them?
A. My stenographer.
Q. At whose request?
A. Mr. Brady's request.
Q. Did you give him access to all the letters that you had there?

A. Yes, sir; those he asked for, I had copies of all of those he selected.

1385 Q. Free of cost?

A. He kindly gave the young lady a box of candy.

Redirect examination.

(By Mr. BATTS:)

Q. Mr. Brady took there the written authority under the law did he not, to make this examination?

A. Yes, sir.

Q. How long did he stay there?

A. Saturday and Sunday morning.

Q. How many hours in all?

A. In the office?

Q. Yes.

A. I declare I don't know; I should say ten or twelve hours.

Q. You couldn't have gone through more than one-tenth of what you had, in that time, could he?

A. No, sir.

Q. You had counsel there at the time representing you, did you not?

A. On Saturday only; no one on Sunday.

Q. Well, that was after you had taken advice of counsel, after having counsel there?

A. Saturday, yes, sir.

Q. You got instructions from St. Louis to get a lawyer, and then Mr. Brady selected the letters?

A. Yes, sir.

1386 *Testimony of E. S. Horn.*

The following testimony of E. S. HORN, taken at St. Louis, was offered by plaintiff,—Mr. Lightfoot reading the questions and Mr. Allen the answers, from the stenographic record:

Q. Upon what basis did you fix the prices, Mr. Horn?

A. Well, the only way I would fix them would be in the case of an advance or a decline. Then I would adjust the selling price accordingly.

Q. Well, did the fact of competition existing have anything to do with the price adopted?

A. Yes, sir.

Q. What?

A. If a competitor of ours, in the same line of business, was offering a similar class of goods at less than our selling price, we reduced our selling price to meet the conditions.

Q. Wherever there was competition you did that, when it was necessary?

A. Yes, sir.

Mr. ALLEN: Then on the next page, 311, the last question at the bottom of the page:

Q. Can you recall what action, if any, you took—do you recall any action that you took because of the receipt of that letter?

A. If there was a change in the price, it is advanced or declined, it would naturally change our selling prices accordingly.

Q. That is, if there was a change in the selling price of the refineries of the Company?

A. Yes.

Q. You would change your selling price accordingly?

A. Yes, sir.

(Omit next question and answer.)

1387 Q. Do you know anything about the delivery of lubricating oils to a mill or plant of the Central Coal & Coke Company located at Kennard, Texas?

A. Yes, sir.

Q. To whom were those oils delivered, at Kennard, Texas?

A. They were delivered to the Central Coal & Coke Company.

Q. That is the plant of that company, at Kennard, Texas?

A. Yes, sir.

Q. Did you make deliveries of lubricating oil to any other plant of that company in Texas?

A. No, sir.

Q. How did you come to make deliveries of those oils?

A. It seems that the Standard Oil Company of Kansas City were negotiating with the purchasing agent of the Central Coal & Coke Company, and he asked his representative, whom he was working under, to obtain prices for delivery at Kennard, Texas. The manager of the lubricating department of the Standard Oil Company asked us to quote them prices for delivery to the Central Coal & Coke Company at Kennard, Texas.

Q. Enumerating the grades of oil they wanted?

A. Yes, sir, and they wanted quotations.

Q. What did you do?

A. We quoted them prices, delivered there.

Q. Was there any understanding reached?

A. They accepted the proposition and asked us to honor the requisitions from the Central Coal & Coke Company and render invoices to them.

Q. That is, you rendered invoices of the oils you delivered at Kennard, Texas, to the Standard Oil Company of Indiana?

A. Yes, sir.

Q. And who paid you for the oils delivered in that way?

1388 A. The Standard Oil Company.

Q. They paid you the prices agreed upon as between the Waters Pierce Oil Company and the Standard Oil Company of Indiana?

A. Yes, sir.

Q. Can you recall any other transaction of that kind with the Standard Oil Company and the Central Coal and Coke Company in Texas?

A. No, sir.

Q. The transaction in effect was the sale to the Standard Oil Company the same as you would sell to anybody or any other concern?
A. Yes, sir.

Cross-examination:

Q. Mr. Horn, you say that you don't positively identify that letter a copy of which was shown you by Mr. Johnson, but you assume that it was received in the regular course of business?
A. Yes, sir.
Q. Wasn't it a frequent occurrence to receive letters of a similar import?
A. No, sir.
Q. From Mr. McNall?
A. We received quotations almost daily or weekly.
Q. I mean letters of that kind and character from Mr. McNall, when he was commercial agent of the company at New York?
A. That is the first letter that I recall seeing of that nature.
Q. You frequently received from him quotations on different kinds of oil, lubricating oils and wax products and things of that sort?
A. Yes, sir.
Q. Those prices would be quoted on board the cars at the refinery?
A. Yes, sir.
Q. What kinds and character of commodity did the lubricating department handle? That is, the sales department of the lubricating branch?
1389 A. We handled everything outside of the refined oils and naphtha and gasoline, which is manufactured from petroleum.
Q. You handle all sorts of greases and lubricating oils and wax, and everything of that character?
A. Yes, sir.
Q. Does the Waters Pierce Oil Company manufacture any lubricating oils?
A. We compound oils.
Q. You have a manufacturing establishment here in St. Louis, have you not?
A. Yes, sir.
Q. And compound cylinder oils of various kinds?
A. Yes, sir.
Q. And grease?
A. Yes, sir.
Q. What percentage of your lubricating oils did you purchase from the Standard, in the compounded state? Approximately, of course; I don't expect you to give an accurate statement.
A. I should say fifty per cent.

* * * * * * * *

Q. Now, Mr. Horn, isn't it a fact that on certain brands of lubricating oils that you purchased from the Standard Oil Companies, that is, from the different refineries and agencies, that they fixed the

selling price, the minimum selling price, for you, at which you should sell those brands?

A. Not in this market.

Q. You say that is not a fact?

A. Not in this market.

Q. Well, in any market, with the Waters Pierce Oil Company?

A. I mean not in the Waters Pierce Oil Company market.

1390 Q. They did not have anything to do with and did not prescribe or did not suggest any selling prices of any brands that you handled of theirs?

A. No, sir.

Q. Of any kind or character?

A. No, sir; if they did they were not carried out.

Q. Well, why do you put that modification in?

A. Because we have a selling price. I know they sell less than we do on some brands of oil.

Q. Where? At what point?

A. Well, through the South.

Q. Not in Texas?

A. Well, they can ship it from New Orleans to some points in Texas at less than we are selling.

Q. Of course, they can; I understand that. And they are selling it all over the country at prices less than you sell at in Texas, are they not?

A. Yes, sir.

Q. You never heard of their selling any in Texas did you, in the last six or eight years?

A. No, sir.

Q. You have contracts with practically all of the railroads of Texas to furnish them lubricating oil, have you not?

A. I don't believe we have with all of them.

Q. I said practically all?

A. Practically. The large roads, yes, sir.

Q. But you furnish all of the roads don't you with lubricating oil, practically all the roads in Texas?

A. No, sir.

Q. Have you the original contracts in your department, in your custody?

A. They are in my department, yes, sir.

1391 Q. Well, those contracts are made directly with your office, with your department here, the home office?

A. Yes, sir.

Q. With the railro[illegible]ompanies?

A. Yes, sir.

Q. Those contracts are kept on file here?

A. Yes, sir.

* * * * * * *

Q. It is a fact, isn't it, Mr. Horn, that where your department fixes the prices or promulgates the prices that the two prime factors in determining or fixing those prices are the cost, including the

freight and marketing, and competition? That those are the two prime factors that govern you in fixing the prices to the trade?

A. Well, we add some profit.

Q. Well, of course, your profit, that would be in addition to that?

A. Yes, sir.

Q. You first take the cost price—I mean the two original prime factors upon which you base the price—you get as much as the trade will stand, of course, in the territory, or that you think it will stand, where you have no competition?

A. Yes, sir.

* * * * * * *

Q. A very large percentage was purchased by the Waters Pierce Oil Company from the Standard Oil Company, or Standard Oil Company interests?

A. Yes, sir.

Q. Did you mean to say in cross examination that the Standard Oil Company sells lubricating oil cheaper in other localities than the Waters Pierce Oil Company sells within the territory in which
1392 it does business?

A. Yes, sir.

Q. How do you know?

A. We encounter their quotations.

Q. That is, it sells oil cheaper in Illinois than the Waters Pierce Company sells oil in Missouri?

A. Yes, sir.

Q. What is the difference in price?

A. Sometimes from a cent to two cents a gallon. Sometimes three cents. That is, when I say that, I refer to cylinder oil and high class oil. I mean oils which can stand a variation like that.

Judge PENN: We desire to offer the testimony of the witness he has just read, in connection with their introduction of these parts, so the Jury will understand it better.

The COURT: Hasn't part of that deposition been heretofore offered?

Judge PENN: Very small part, but if the State only wants to put in a half a page or so, we have no objection to letting them put that in now and let us put in the parts of this and Mr. Adams' testimony, but we wish to request that the Court allow us to do so in the morning.

The COURT: I will pass on that in the morning; I know now of no reason why it should not be permitted.

Testimony of C. M. Adams.

The following testimony of C. M. Adams, taken at St. Louis, is offered by the plaintiff.

Q. Now, isn't it a fact that ever since your connection with the Waters Pierce Oil Company, both the old company and the
1393 new, with the exception of a short time when Mr. J. D. Johnson was on the Board of Directors, there have been three

members of the Board who have been dictated by the Standard Oil people? Don't you know that to be a fact? Supposedly representing them, I am not asking if they did represent them. Don't you know it to be a fact that during your entire connection with the old Company as a director, and with the new company, except for this interval, in which Mr. J. D. Johnson was on the Board, that three members of the Board were dictated by the Standard Oil people or the Standard Oil interests?

A. I can't say that I know that—that they were dictated by them.

Q. What is your information about it?

A. Well, I can't say that I have any positive information.

Q. Well, information that is not positive? What have you information in regard to that? Why do you hesitate about it? You were one of the men that were supposed to represent the Standard Oil on the Board, were you not?

A. I am a director of the company.

Q. Aren't you one of the men who were supposed to represent the Standard Oil interests on the Board and always have been, and so considered by yourself and by every one connected by the Company? Now, why do you hesitate about that? Don't you know that to be a fact?

A. I cannot exactly say that my election as a director was dictated by them, or that any other one or two people were. The election was held by the stockholders and the Board of Directors are elected.

Q. Oh, that is a mere formality; don't you know that, Mr. Adams?

A. I can't say that I do, no.

Q. No? Why, don't they prepare in advance what you are going to do at the meeting? As to who shall be elected Directors or officers?

A. No, sir, I don't think that that is the case.

Q. It is not done?

1394 A. That is, unless it is done with some one before the meeting is held that I know nothing about.

Q. Where did you get your information as to who would be selected on the Board of Directors?

A. Well, I will tell you. At the last election, I received a proxy from——

Q. From M. M. Van Buren?

A. From M. M. Van Buren who owns a very large amount of stock.

Q. Ostensibly?

A. And he said that he would be pleased to see the old Board re-elected.

Q. Who was the old Board?

A. The old Board was Mr. Pierce—Mr. H. Clay Pierce—Mr. C. A. Pierce, Mr. Van Buren, Mr. Taylor, and myself.

Q. Who is Mr. Taylor?

A. Mr. Taylor's name is Walter F. Taylor. He is an attorney belonging to the firm of——

Q. Carter, Ledyard Taylor & Co.?

845

A. Something of that kind. I forget the style of it exactly.
Q. Of New York?
A. Yes, sir.
Q. Do you know what interest he has in the Waters Pierce Oil Company?
A. He owns one share of stock.
Q. He owns one share of stock?
A. Yes, sir.
Q. Transferred to him by whom?
A. I don't know.
Q. From whom?
A. I don't know.
Q. Isn't it a share of stock—you are custodian of the stock
1395 books, are you not?
A. Well, they are in my office.
Q. Oh, why do you quibble? I don't want to——
A. Well, you use the word "custodian".
Q. Aren't you the custodian of that book?
A. I don't know that that term would apply to this matter. The book is in the safe in my office.
Q. I don't want to mislead you, or get you tangled up, or anything like that, but all I want is just the facts. Of course, if you know them, you can say so, Mr. Adams?
A. Well, I can't remember where this share of stock—who it was transferred from, without referring to the books.
Q. You have no recollection at all about that?
A. No, sir; I have not, without referring to the books.
Q. Will you refer to the books and say?
A. If it is necessary I can do so.
Q. Now, getting back to the question I propounded to you a while ago,—don't you know in your own mind, and isn't that the impression that was made upon your mind that you and Mr. Gruet and Mr. H. M. Tilford, of the old company, were supposed to represent the Standard Oil interests, as members of the Board of Directors? Isn't that true?
A. Well, I——
Q. I am not asking you a positive fact, but what is your impression? You know the impression that was made on your mind about it?
A. Well, that is the impression that I had at that time.
Q. Now, isn't it a fact also that after the reorganization that the impression was made upon your mind that Mr. Gruet and you and Mr. Walter F. Taylor, who succeeded Mr. John D. Johnson as a member of the Board, was supposed to represent the Standard Oil interest?
A. I can't recollect now when Mr. Taylor came into the Board.
1396 Q. I don't care when he came in. He did come into the Board, didn't he?
A. Well, he was elected.

Q. He succeeded Mr. Johnson as a member of the Board, didn't he?

A. Well, I don't remember about that now.

Q. Mr. Tinsley was a member of the Board, wasn't he? At one time?

A. Yes, he was at one time.

Q. Wasn't Mr. Tinsley when he was on the Board—wasn't the impression made upon your mind that Mr. Tinsley was supposed to represent the Standard Oil interests, and didn't he represent the Standard Oil interests, and raise a row here, because he undertook to run it absolutely independent of Mr. Pierce, and his interests? Isn't that a fact? Don't you know that to be a fact?

A. Well, I don't know how much of a row he raised. I am not sure.

Q. Well, are not those the facts? That you knew that he was supposed to represent the Standard Oil interests, and was sent here for the express purpose of representing their interests. Don't you know that? Why do you hesitate about that, Mr. Adams?

A. Well, I——

Q. Have you absolutely no information or impression about that fact? Now why do you hesitate about that?

A. Why the impression was of course at that time that he was representing the Standard Oil Company, yes, sir.

Q. You say that you know—that it is your understanding that Mr. Tinsley was sent here to represent the Standard Oil Company's interest?

A. That is my supposition of the matter.

Q. Well, that is based upon what occurred here, in the management of the company, isn't it?

A. After he came, yes.

Q. After he came. That is what I say. Now, getting
1397 back to the question I propounded a while ago, don't you know it to be a fact that since the organization of the new company up to along in June of 1905, with the exception of a period during which Mr. J. D. Johnson was on the Board, there has always been three members of the Board of Directors that were supposed to represent the Standard Oil interests?

A. Yes, I think that is true.

(Thereupon Court adjourned until Wednesday morning at 9.30.)

WEDNESDAY, *May* 29.

Court opens at 9.30 a. m.

Mr. ALLEN: We offer in evidence the depositions of Charles S. Keith, taken in Kansas City, on interrogatories propounded to him by the plaintiff.

Interrogatory 1. What is your name, age and place of residence?

Answer. Charles S. Keith, Kansas City, Missouri, age thirty-four.

Interrogatory 2. What is your business? If you say you are in the lumber business, state how long you have been in said business;

and state with what company or companies you are connected or employed.

Answer. Vice president and general manager of the Central Coal & Coke Company and general manager of the Louisiana & Texas Lumber Company. I have been in the lumber business for ten years, employed by the Central Coal & Coke Company and the Louisiana & Texas Lumber Company.

Interrogatory 3. If you have stated, or if it be a fact, that you are connected with the Central Coal & Coke Company, then
1398 state in what capacity you are connected with said company, and during what years you have been so connected.

Answer. As vice president and general manager. I have covered a period since 1891.

Interrogatory 4. If you have stated, or if it be a fact, that you are the General Manager of the Central Coal & Coke Company, then state whether or not it has an office in Kansas City?

Answer. It has.

Interrogatory 5. Please state whether or not the Central Coal & Coke Company, owns or operates a sawmill within the State of Texas; if so, at what place or places?

Answer. It does not, but the Louisiana & Texas Lumber Company does at Ratcliffe, Texas, Houston County.

Interrogatory 6. If you have said that the Central Coal & Coke Company owns or operates a sawmill at Kennard, Texas, then state how long said company has owned or operated said mill, and under what name is said mill operated?

Answer. The Central Coal & Coke Company does not own a mill, but the Louisiana & Texas Lumber Company does, at Kennard, or Ratcliff, Texas, and it has been in operation since about 1901 or 1902,—I don't remember just exactly the year. The mill is operated in the name of the Louisiana & Texas Lumber Company. The Central Coal & Coke Company has no proprietary ownership in it at all.

Interrogatory 7. Please state whether or not the Central Coal & Coke Company is interested in any manner, directly or indirectly, in any sawmill plant located at Kennard, Texas; if so, state the name of the plant, and state whether or not the Central Coal & Coke Company furnishes it with any supplies?

Answer. No. Central Coal & Coke Company does not furnish the mill at Kennard, Texas, with any supplies, but the sup-
1399 plies are purchased from my office as general manager for the Louisiana & Texas Lumber Company.

Interrogatory 8. State whether or not the Central Coal & Coke Company owns or operates any sawmills at Neame and Carson, Louisiana. If so, state the name of the plants.

Answer. The Central Coal & Coke Company owns a mill each at Neame and Carson, and they carry the names of Neame and Carson.

Interrogatory 9. Please state whether or not the Central Coal & Coke Company owns or operates, either directly or indirectly, any sawmill plant at any other point in Texas outside of Kennard. If so, state the points at which such plants are located, and how long the Central Coal & Coke Company has been interested in same.

Answer. No.

Interrogatory 10. Please state whether or not the Central Coal & Coke Company, during the years of 1903, 1904, 1905, 1906, or 1907, entered into any contract with any oil company to furnish the Central Coal & Coke Company with lubricating, cylinder, engine or any other kind of oils or greases for either one or more of the years mentioned. If so, state the name of the oil company with whom such contracts were made.

Answer. In the years 1903 and 1904, Central Coal & Coke Company had a contract with the Waters Pierce Oil Company. In 1905 with the Bonner Oil Company. In 1906 with the Standard Oil Company. For 1907 its contract is divided between the Standard and the Bonner Company, the Standard supplying the oil to the Texas plant and the Bonner Company to the Louisiana plants.

Interrogatory 11. Please state whether or not the Central Coal & Coke Company made any contract with any Standard Oil Company for its supplies of oils and greases during either of the following years: 1903, 1904, 1905, 1906 or 1907?

Answer. The answer to the last Interrogatory answers that.

1400 In 1903 and 1904 the Waters Pierce Oil Company, in 1905 the Bonner Oil Company, in 1906 the Standard Oil Company, 1907 the Bonner Oil Company and Standard Oil Company. I only know this company as the Standard Oil Company and the Waters Pierce Oil Company as the Waters Pierce Oil Company.

Interrogatory 12. If you have stated, or if it be a fact, that the Central Coal & Coke Company, or any officer thereof, made or entered into any contract with any Standard Oil Company for any oil or greases for either or all of the years mentioned in the last preceding interrogatory, you will attach all such contracts, or a true copy thereof, to your answer and make it a part of your answer, and mark same for identification.

Answer. I will. Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M.

Interrogatory 13. Please state whether or not your company had such a contract for the year 1906 or any portion thereof. If so, attach a copy of said contract to your answer, and state whether or not it is a true copy, and mark same for identification.

Answer. We had such a contract and I will attach it. Exhibits F, G, K, J.

Interrogatory 14. If you have stated, or if it be a fact, that the Central Coal & Coke Company had a contract with any Standard Oil Company for its supplies of oils and greases for any year from 1903 to 1907, inclusive, state whether or not it had a contract during the same years with the Waters Pierce Oil Company for any of its supplies furnished to any mill or plants owned or operated by the Central Coal & Coke Company in the State of Texas or the State of Louisiana.

Answer. During the years before mentioned we had contracts with the Waters Pierce Oil Company and subsequently with the Standard Oil Company, but during any one year our contract was with only one company, with the exception of 1907, when it is divided between the Standard and the Bonner Oil Company.

1401 Interrogatory 15. State whether or not the Standard Oil Company furnish the Central Coal & Coke Company, or any other Company owned or operated by or connected with such com-

pany, any supplies of oils or greases in the State of Texas. If so, state through what company such supplies were furnished.

Answer. The Standard Oil Company furnished the Louisiana & Texas Lumber Company oil during the years above mentioned, as per contract attached hereto as exhibit, for its plant at Kennard, Texas. However, there is no connection between the Central Coal & Coke Company and the Louisiana & Texas Lumber Company, only that the Central Coal & Coke Company disposes of the product of the Louisiana & Texas Lumber Company on a commission basis.

Interrogatory 16. Please state whether or not it be a fact that all of the supplies of oils and greases furnished to the Central Coal & Coke Company or to any other company connected with the Central Coal & Coke Company under any contract made with any Standard Oil Company, were furnished to your company or companies by or through the Waters Pierce Oil Company in the State of Texas.

Answer. During the years we had contracts with the Waters Pierce Oil Company they furnished the oil, and it may be that the Waters Pierce Oil Company is furnishing the oil to us under our contract with the Standard Oil Company, but all remittances are being made direct to the Standard Oil Company, but I am not clear in my own mind whether this is being done, as I do not see the bills of lading covering the oil from the points or origin from which it is shipped. That information will have to be gotten at the mill.

Interrogatory 17. To what company did you pay your bills for supplies of oils and greases furnished any of your plants by the Waters Pierce Oil Company in Texas during the life of any contract which you had with the Standard Oil Company for such supplies.

1402 Answer. All bills were remitted direct to the Company in whose name the contract was made. In case where the Waters Pierce Oil Company were contracted with, the remittances were made to them; when the Bonner Company furnished the oil, to the Bonner Company; and when the Standard furnished the oil, to the Standard.

Interrogatory 18. If you have not already done so, please state whether or not the Central Coal & Coke Company had any contract with any Standard Oil Company for oils and greases for any portion of the year 1905. If so, please attach said contract to your answer, or a true copy of same, make it a part of your answer, and mark it for identification and state how you have marked it.

Answer. No. In the year 1905 our contract was with the Bonner Oil Company.

Interrogatory 19. Please state whether any supplies were furnished under that contract to any of your plants in Texas or Louisiana. If so, by and through what company were the supplies delivered, and what company you paid for such supplies?

Answer. All oils and greases purchased by the Central Coal & Coke Company and the Louisiana & Texas Lumber Company on account of the year 1905 were purchased from the Bonner Oil Company, and none from the Standard or the Waters Pierce Oil Company.

Interrogatory 20. If you have stated, or if it be a fact, that the Waters Pierce Oil Company delivered to any of the plants of the Central Coal & Coke Company, in the State of Texas, oil for and on behalf of any Standard Oil Company, please state from what station of the Waters Pierce Oil Company said deliveries were made.

Answer. I cannot answer that question, except in this way: that during 1904, 1905 and 1906 all the oils used by the Louisiana & Texas Lumber Company at its plant at Kennard, Texas, were shipped from the station of Lufton, Texas, by the three companies with whom we had contracts.

1403 Interrogatory 21. If you have stated, or if it be a fact, that the Waters Pierce Oil Company delivered to the Central Coal & Coke Company, or any sawmill owned or operated by the Central Coal & Coke Company, or any other company controlled by said company, any oil or greases for and on behalf of any Standard Oil Company, please state whether or the same charges were made by the Waters Pierce Oil Company for such supplies as your company had contracted for with the Standard Oil Company.

Answer. The Waters Pierce Oil Company never rendered any bills to the Louisiana & Texas Lumber Company or the Central Coal & Coke Company for any oil furnished under contract between the Central Coal & Coke Company or the Louisiana & Texas Lumber Company and the Standard Oil Company, but all oils were invoiced by the Standard Oil Company, and we remitted direct to the Standard Oil Company. Prices were according to the contracts with the company, as shown by the exhibits hereto attached.

Interrogatory 22. If you have stated, or if it be a fact, that the Waters Pierce Oil Company delivered any oils in Texas to any interest which you represent under any contract had by your company with any Standard Oil Company, then state whether or not there was any difference in prices charged by the Waters-Pierce Oil Company and those contracted for with the Standard Oil Company for any such supplies.

Answer. Our contracts were always let in competition and let to the lowest bidder, and necessarily there must be discrepancy in the prices furnished one year as against another on account of this competition. We never purchased any oil from the Waters Pierce Oil Company during the life of our contract with the Standard Oil Company, nor did we purchase oil from any other company during the time of the contract of any of the three oil companies whom we have named as having our contracts during the period named.

1404 Mr. ALLEN: We offer all these exhibits, Gentlemen.

Judge STEDMAN: May it please Your Honor, we object to the introduction in evidence of these exhibits, which are, copies of contracts for the purchase of oil by the Louisiana & Texas Lumber Company and the Central Coal & Coke Company. Some of the contracts are for the purchase of oil from the Standard Oil Company, others are for the purchase of oil from the Bonner Oil Company, and others are for the purchase of oil from the Waters Pierce Oil Company. We object to each and all of these contracts, because immaterial and irrelevant. So far as the contracts with the Waters Pierce

Oil Company are concerned, they are shown merely to be consumers' contracts, such as were presented to Your Honor yesterday in another connection, and they are not shown to be in violation of law, and they do not tend to establish any issue in this case. So far as the contract with the other companies is concerned, they appear to have been made with persons not parties to this suit; and we think it does not appear that the defendant had any connection, and it does not appear that if the defendant has connection with either of these companies, that these contracts related in any wise to any connection between the defendant and either of these companies. These contracts, too, we say, are merely consumers' contracts, and they are immaterial and irrelevant upon that ground, as well as the others.

Mr. ALLEN: We don't offer them to show a violation of the law, if the Court please. They are offered for two purposes: In the first place, to show, in connection with the testimony of this witness, what we have endeavored to show by other witnesses, that the agreement that the Standard Oil Company should stay out of the Waters Pierce Oil Company's territory was carried out, and that when the Standard Oil Company made any contract with anybody in the Waters Pierce Oil Company's territory the contract was turned over
1405 to the Waters Pierce Oil Company, and therefore there was no competition, and to show that there was no real competition so far as the Standard and the Waters Pierce Oil Company were concerned. The statement of the witness is that he let these contracts to the lowest bidder. Now, whenever two people bid on a contract and it don't make any difference which one gets it, the other one fills it, it shows those facts.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

(Thereupon the exhibits attached to the deposition were introduced in evidence as follows):

Memorandum of agreement between the Waters Pierce Oil Company (incorporated under the laws of the State of Missouri, May 29th, 1900), the first Party, and (Central Coal & Coke Company) of (Carson, La.) the Second Party.

Witnesseth: That in consideration of the Second Party agreeing to take from the First Party, all of the Lubricating Oils and Greases it may require for its own consumption, the First Party agrees to furnish F.O.B. (Carson, La.), for a period of one year from date of signature, the following Oils and Greases at special prices named, it being understood and agreed that the maximum quantity of each grade shall not exceed, Cylinder Oil (30) Bbls.; Engine Oil (75) Bbls.; Black Oil (25), Grease (6) Bbls., (75) (Refined) Barrels, without the consent of the First Party, at the following prices, to-wit:

	Cents per gallon.
1406 Special Valve Oil	36
New Dark Valve "	33
Castor Machine "	19
Atlantic Red Eng. "	20
Summer Lub. Oil	9½
Winter " "	10¾
Golden Axle Grease Bbls. or ½ Bbls.	30 per lb.
" " " 25 lb. Pail	$9.00 per Doz.
Cup Grease Bbls. or ½ Bbls.	6 cts. per lb.
" " 25 lb. drum	7 cts. per lb.
Brilliant Oil I. Bbls	9 F. O. B. Lake Charles
Water White " "	11 do.
Eupion " "	12 do.

(One cent rebate on Black & Refined Oils until July 15, 1903.)

The Second Party agrees to receive, and pay the First Party for, all Oils and Greases ordered by (them), at said prices as aforesaid.

The above prices are for Oils delivered in barrel quantities. Half-barrels, three (3) cents above; five (5) and ten (10) gallon lots in cans or 2/5 cases, seven (7) cents above barrel prices.

The first party guarantees that the Oils and Greases above mentioned are to be of uniform quality, and at all times to be up to their standard.

Should there, at any time during the life of this contract, be a decline in the Company's schedule of prices below the above mentioned prices, then the Second party shall have the benefit of such decline.

Settlement for all supplies of Oils and Greases sold and delivered to the Second Party by the First Party hereunder shall be made (60 days or 2% off for cash in 10 days).

Executed at (Shreveport) this (30th) day of (Dec.) 1902.

WATERS PIERCE OIL COMPANY,
By (J. H. LITTLEFIELD).
—— ——,
By —— ——.

Supplied from ——.
Local Rate —— cts. per cwt.

1407 (Endorsed:) Waters Pierce Oil Co. Dec. 30th, 1902. Dec. 30th, 1903. Carson. Exhibit "A." E. A. Neel, Notary Public. Identified. Chas. S. Keith.

Copy.

Memorandum or agreement, between the Waters Pierce Oil Company (Incorporated under the laws of the State of Missouri, May 29th, 1900), the first party, and the Lousiana & Texas Lumber Company of Lufkin, Texas, the Second Party.

Witnesseth: That in consideration of the second party agreeing to take from the first party, all of the Lubricating Oils and Greases it may require for its own consumption, the First Party agrees to furnish F. O. B. Lufking, Texas, for a period of one year from date of signature, the following Oils and Greases at special prices named, it being understood and agreed that the maximum quantity of each grade shall not exceed, Cylinger Oil 25 Bbls., Engine Oil 50 Bbls.; Black Oil 50 Bbls.; Grease 10 Bbls., Ref. Oil 75 Barrels, without the consent of the First Party, at the following prices,to-wit:

	Cents per gallon.	
Special Valve Oil	35¢	
New Dark Valve Oil	32¢	
Castor Machine Oil	18¾¢	
Red Engine Oil	17½¢	
Summer & Winter Black Oil	08¢	
Vax Cylinder Oil	50¢	less 10%
600 W. Cylinder Oil	65¢	" "

1408 Gol. Axle Grease, Bbls. or ½ Bbls. 3¢ per lb.
25# Pails $9.00 per doz.
Cup Grease, Bbls. or ½ Bbls. 6¢ per lb. in 25# Drums 7¢ per lb.

Brilliant Oils in Iron Barrels	09¢
Water White Oil in Iron Barrels	11¢
Euption Oil in Iron Barrels	12¢

First party agrees to pay second party 50¢ each for return in good condition of all empty W. P. O. Co. Wood Barrels.

The Second par-y agrees to receive, and pay the First Party for, all Oils and Greases ordered by them, at said prices as aforesaid.

The above prices are for Oils delivered in barrel quantities. Half-barrels, three (3) cents above; five (5) and ten (10) gallon lots in cans or 2/5 cases, seven (7) cents above barrel prices.

The First party guarantees that the Oils and Greases above mentioned are to be of uniform quality, and at all times to be up to their standard.

Should there, at any time during the life of this contract, be a decline in the Company's schedule of prices below the above mentioned prices, then the Second Party shall have the benefit of such decline.

Settlement for all supplies of Oils and Greases sold and delivered to the *the* Second Party by the First Party hereunder to be made 60 days or 2% off for cash in 15 days.

Executed at Shreveport this 30th day of December, 1902.

WATERS PIERCE OIL COMPANY,
Signed by J. H. LITTLEFIELD, *Mgr.*
LOUISIANA AND TEXAS LUMBER COMPANY,
Signed by W. N. CARSON, *Mgr. of Mills.*

Supplies from ——.
Local rate —— cts. per cwt.

1409 (Endorsed:) Waters Pierce Oil Co. Dec. 30th, 1902. Dec. 30th, 1903. Kennard. Exhibit "B." E. A. Neel, Notary Public. Identified. Chas. S. Keith.

Copy.

Memorandum or agreement between the Waters Pierce Oil Company, (Incorporated under the laws of the State of Missouri, May 29th, 1900), the first party, and Louisiana & Texas Lumber Co., of Kennard, Texas, second party.

Witnesseth: The first party agrees to furnish to the second party, when ordered by them, f. o. b. Lufkin, Texas, during a period of one year from date of this agreement, the Oils and Greases hereinafter specified. It being understood and agreed, however, that the aggregate maximum quantity of each shall not exceed 40 bbls. of Cylinger Oil; 140 bbls. of Engine Oil; 50 bbls. of Black Oil; 15 bbls. of Grease; and 150 bbls. of Refined Oils without the consent of the first party, at and for the following prices to wit:

	Cts. per gal. in wood bbls.	Cts. per gal. in iron bbls. or drums.
600 W. Cylinder Oil.....	70 less 16½%	
Vax " "	55 " 10%	
Special Valve "	35¼ net	
Castor Mchy. "	19	
Red Engine "	19	
1410 Black Oils	10	

Golden Axle Grs. Brls. or ½ Brls. 3½¢ per #, 25# Pails $9.75 per doz.

Cup Grs. Bbls. or ½ Bbls. 6¢ per #, 25# Drums 7¢ per lb.

Beaumont Oil Brilliant.....	10
Prime White Corsicana	12
Water White "	14
Eupion	16

The wooden barrels will be of the capacity of about fifty (50) gallons each. In the event any of said Oils are delivered on orders of the second party in half-barrels, then the second party shall pay for the same at the rate of three (3) cents per gallon in excess of the wooden-barrels prices, and if in five (5) or ten (10) gallon cans or cases, then at the rate of seven (7) cents per gallon in excess of the wooden-barrel prices specified above.

The first party agrees and guarantees that the said Oils and Greases shall be of uniform quality, and at all times up to their regular standard.

The first party further agrees, that if at any time during the term of this contract there should be a decline in the company's schedule of selling prices of said Oils and Greases below and above mentioned prices, then the second party shall have the benefit of such decline.

The second party agree to receive, and pay the first party for, all of said Oils and Greases delivered hereunder, at the prices aforesaid.

Settlement for all supplies of Oils and Greases sold and delivered to the second party by the first party hereunder to be made 60 days or 2% off for cash in 10 days.

The second party agree that whenever any of said Oils are delivered to them in iron drums or iron barrels, the said drums and barrels shall be promptly emptied and returned free of cost to the first party f. o. b. Lufkin, #2 Kennard, Tex. that all iron drums and iron barrels which are not so returned, shall be charged to and paid for by the second party, at their cost price to the first party,
1411 and that the second party shall pay the first party for all damages beyond ordinary wear which any of said iron drums and iron barrels may sustain while they are in the possession of the second party.

The Second party agree to purchase from the first party all of said kinds of Oils and Greases required by them, for their own consumption during the term of this agreement, up to the maximum quantity hereinbefore specified. Provided, however, that the second par-y shall not be required to order, nor the first party be required to deliver, more of said Lubricating Oils and Greases than the second party can use in their plant at Kennard, Texas, during said term.

Executed at Shreveport, La., this 30th day of December, 1903.

WATERS PIERCE OIL COMPANY,
Signed by J. H. LITTLEFIELD.
LOUISIANA & TEXAS LUMBER COMPANY,
Signed by J. H. MORRISON.

Supplied from ——.
Local rate —— cts. per cwt.

(Endorsed:) Waters Pierce Oil Co. Dec. 30th, 1903. Dec. 30th, 1904. Kennard. Exhibit "C." E. A. Neal, Notary Public. Identified. Chas. S. Keith.

1412 Original.

Memorandum of agreement between the Waters Pierce Oil Co. (Incorporated under the laws of the state of Missouri, May 29th, 1900), the first party, and Central Coal & Coke Co. of Neame La. second party.

Witnesseth: The first party agrees to furnish to the second party, when ordered by them, F. O. B. Neame, La. during a period of one year from the date of this agreement, the Oil and Greases hereinafter specified. It being understood and agreed, however, that the aggregate maximum quantity of each shall not exceed 35 bbls. of Cylinder Oil; 125 bbls. of Engine Oil; 35 bbls. of Black Oil; 10 bbls. of Grease; and 240 bbls. of refined oils, without the consent of the first party, at and for the following prices, to-wit:

	Cts. per gal. in wood bbls.	Cts. per gal. in iron bbls. or drums.
No. 1 Cylinder Oil	37½	
No. 66 Cylinder Oil	34½	
No. 8 Cylinder Oil	33½	
New Dark Valve Oil	30½	
Red Engine Oil	[29½]*	19
Castor Mchy. Oil	[20½]*	19
Renown Engine Oil	27½	
Black Oils	[11½]*	10

Golden Axle Grs. Bbls. or ½ Bbls. 3½ per #, 25# Pails $9.75 per doz.

Cup Grease, Bbls. or ½ Bbls. 6¢ per lb., 25# Drums 7¢ per lb.

Beaumont Brilliant, 150"	10
Corsicana Prime White	12½
Corsicana Water White	14½
Eupion	16½

The wooden barrels will be of the capacity of about fifty (50) gallons each. In the event any of said Oils are delivered on orders of the second party in half-barrels, then the second party shall pay for the same at the rate of three (3) cents per gallon in excess of the wooden-barrel prices, and if in five (5) or ten (10) gallon cans or cases, then at the rate of seven (7) cents per gallon in excess of the wooden-barrel prices specified above.

1413 The first party agrees and guarantees that the said Oils and Greases shall be of uniform quality, and at all times up to their regular standard.

The first party further agrees, that if at any time during the term of this contract there should be a decline in the Company's schedule of selling prices of said Oils and Greases below the above mentioned prices, then the second party shall have the benefit of such decline.

The second party agree to receive and pay the first party for, all of said Oils and Greases delivered hereunder, at the prices aforesaid.

Settlement for all supplies of Oils and Greases sold and delivered to the second party by the first party hereunder to be made 60 days or 2% off for cash in 10 days.

The second party agree that whenever any of said Oils are delivered to them in iron drums or iron barrels, the said drums and barrels shall be promptly emptied and returned free of cost to the first party F. O. B. Neame, La., that all iron drums and iron barrels which are not so returned, shall be charged to and paid for by the second party, at their cost price to the first party, and that the second party shall pay to the first party for all damages beyong ordinary

[*Figures enclosed in brackets erased in copy.]

wear which any of said iron drums and iron barrels may sustain while they are in the possession of the second party.

The second party agree to purchase from the first party all of said kinds of Oils and Greases required by them for their own consumption during the term of this agreement, up to the maximum quantity hereinbefore specified. Provided, however, that the second party shall not be required to order, nor the first party be required to deliver, more of said lubricating Oils and Greases than the second party can use in their plant at Neame, La., during said term.

1414 Executed at Shreveport, La., this 30th day of December, 1903.

WATERS PIERCE OIL COMPANY,
By J. H. LITTLEFIELD.

CENTRAL COAL & COKE CO.,
By J. H. MORRISON.

(Endorsed:) Waters Pierce Oil Co. Dec. 30th, 1903. Dec. 30th, 1904. Keith. Exhibit "D." A. E. Neel, Notary Public. Identified. Chas. S. Keith.

Copy.

Memorandum of agreement between the Waters Pierce Oil Company (Incorporated under the laws of the State of Missouri, May 29th, 1900), the first party, and Central Coal & Coke Company, of Carson, La., second party.

Witnesseth: The first party agrees to furnish to the second party, when ordered by them, f. o. b. Carson, La., during a period of one year from the date of this agreement, the Oils and Greases hereinafter specified. It being understood and agrees, however, that the aggregate maximum quantity of each shall not exceed 35 bbls. of Cylinder Oil; 125 bbls. of Engine Oil; 35 bbls. of Black Oils; 10 bbls. of Grease; and 240 bbls. of Refined Oils, without the consent of the first party, at and for the following prices to-wit:

1415

	Cts. per gal. in wood bbls.	Cts per gal. in iron bbls. or drums.
No. 66 Cylinder Oil	34¼	
No. 8 " "	33¼	
Red Engine	....	18¾
Castor Mchy. Oil	....	18¾
Black Oils	....	9½

Golden Axle Grs. 3½¢ per lb. 25# pails $9.75 per dozen.

Cut Grs. Bbls. or ½ bbls. 6¢ per lb. 25# drums 7¢ per lb.

Brilliant Oil Beaumont	10½
Prime White Corsicana	12½
Water White	14½
Eupion	16½

The wooden barrels will be of the capacity of about fifty (50) gallons each. In the event any of said Oils are delivered on orders of the second party in half-barrels, then the second party shall pay for the same at the rate of three (3) cents per gallon in excess of the wooden-barrel prices, and if in five (5) or ten (10) gallon cans or cases, then at the rate of seven (7) cents per gallon in excess of the wooden-barrel prices specified above.

The first party agrees and guarantees that the said Oils and Greases shall be of uniform quality, and at all times up to their regular standard.

The first party further agrees, that if at any time during the term of this contract there should be a decline in the Company's schedule of selling prices of said Oils and Greases below the above mentioned prices, then the second party shall have the benefit of such decline.

The second party agrees to receive, and pay the first party for, all of said Oils and Greases delivered hereunder, at the prices aforesaid.

Settlement for all supplies of Oils and Greases sold and delivered to the second party by the first party to be made 60 days or 2% off for cash in 10 days.

The second party agree that whenever any of said Oils are delivered to them in iron drums or iron barrels, the said drums and barrels shall be promptly emptied and returned free of cost
1416 to the first party F. O. B. Carson, La., that all iron drums and iron barrels which are not so returned, shall be charged to and paid for by the second party, at their cost price to the first party, and that the second party shall pay to the first party for all damages beyond ordinary weat which any of said iron drums and iron barrels may sustain while they are in the possession of the second party.

The Second party agrees to purchase from the first party all of said kinds of Oils and Greases required by them for their own consumption during the term of this agreement, up to the maximum quantity hereinafter specified. Provided, however, that the second party shall not be required to order, nor the first party be required to deliver, more of said Lubricating Oils and Greases than the second party can use in their plant at Carson, La. during said term.

Executed at Shreveport, La., this 30th day of December, 1903.

WATERS PIERCE OIL COMPANY,
Signed by J. H. LITTLEFIELD.
CENTRAL COAL & COKE COMPANY,
Signed by J. H. MORRISON.

Supplied from Lake Charles, La.
Local rate —— cts. per cwt.

(Endorsed:) Waters Pierce Oil Co. Dec. 30th, 1903. Dec. 30th, 1904. Carson, La. "Exhibit "E." E. A. Neel, Notary Public. Identified. Chas. S. Keith.

1417 *Contract.*

This agreement made this 30th, day of January, 1905, by and between Central Coal & Coke Co., Carson, La., and the Bonner Oil Company, of Houston, Texas, as follows:

In consideration of Central Coal & Coke Company buying their entire supply of lubricating and Illuminating Oils and Greases for a period of one year, commencing 30th day of January, 1905, from the Bonner Oil Company, the Bonner Oil Company agrees to sell oils for the following prices and terms.

Terms: 2 Per Cent. off in 30 days.

Bayou City Valve	At	50	cents	per	Gallon
Climax Cylinder Oil	"	40	"	"	"
New Era Valve Oil	"	29	"	"	"
Dark Valve Oil	"	25	"	"	"
King Cylinder Oil	"	28	"	"	"
Extra Castor Machine Oil	"	18	"	"	"
Climax Engine Oil	"	22	"	"	"
"B" Engine Oil	"	18	"	"	"
Red Engine Oil	"	17	"	"	"
Summer Black Oil	"	08	"	"	"
Winter Black Oil	"	08	"	"	"
Beaumont Pirme White Oil (Barrel Wood)	"	10	"	"	"
Corsicana Prime White Oil " "	"	11	"	"	"
Corsicana Water White Oil " "	"	12	"	"	"
National Light Oil " "	"	14	"	"	"
Axle Grease (Barrels)	"	2¼	¢ "	"	Lb.
Axle Grease (Pails)	"	3¼	"	"	"
Cup Grease (Barrels)	"	05	"	"	"
Cup Grease (Pails)	"	06	"	"	"

Our Letter of December 27th, 1904, referring to guarantee, to be a part of this contract.

Remarks: The above price F. O. B. Carson, La., and the Bonner Oil Company agrees to pay 50 cents for Lubricating Oil Barrels and $1. for Illuminating Oil Valves, f. o. b. Mill.

All oils are guaranteed to give perfect satisfaction.

BONNER OIL COMPANY,

(Signed) Per J. S. BONNER.

CENTRAL COAL & COKE COMPANY,

(Signed) By THOS. MACKIE, *Gen'l Purch. Agent.*

Approved:

W. C. PERRY, *Vice Presd.*

1418 (Endorsed:) Bonner Oil Co. Jan'y 30th, 1905. Jan'y 30th, 1906. Carson. Exhibit "F." E. A. Neel, Notary Public. Identified. Chas. S. Keith.

Contract.

This agreement made this 30th day of January, 1905. By and between the Central Coal & Coke Co., Neame, La., and the Bonner Oil Company, of Houston, Texas, as follows:

In consideration of Central Coal & Coke Co. buying their entire supply of Lubricating and Illuminating Oils and Greases for a period of one year, commencing 30th day of January, 1905, from the Bonner Oil Company, the Bonner Oil Company agrees to sell oils for the following prices and terms.

Terms: 2 Per cent. off in 30 days.

Bayou City Valve Oil	At 50¢	Per Gallon
Climax Cylinder Oil	40¢	" "
New Era Valve Oil	29¢	" "
New Dark Valve Oil	25¢	" "
King Cylinder Oil	28¢	" "
Extra Castor Machine Oil	18¢	" "
Climax Engine Oil	22¢	" "
"B" Engine Oil	18¢	" "
Red Engine Oil	17¢	" "
Summer Black Oil	08¢	" "
Beaumont Prime White Oil (Wood Barrels)	10¢	" "
Corsicana Prime White Oil " "	11¢	" "
Corsicana Water White Oil " "	12¢	" "
National Light Oil " "	14¢	" "
Axle Grease (Barrels)	2¼¢	Per Pound
Axle Grease (Pails)	3¼¢	" "
Cup Grease (Barrels)	05¢	" "
Cup Grease (Pails)	06¢	" "
Winter Black Oil	08¢	Per Gallon

1419 Our letter of December 27th, 1904, referring to guarantee, to be a part of this contract.

Remarks: Above prices are F. O. B. Neame, La., and the Bonner Oil Co., agrees to pay 50 cts. for Lubricating Oil Barrels and $1.00 for illuminating Oil Barrels, F. O. B. Mill.

All Oils are guaranteed to give perfect satisfaction.

BONNER OIL COMPANY,
Per J. F. BONNER.
CENTRAL COAL & COKE CO.,
By THOM. MACKIE,
Gen. Purchasing Ag't.

Approved
W. C. PERRY, *Vice Pres.*

(Endorsed:) Bonner Oil Co. Jan'y 30th, 1905. Jan'y 30th, 1906. Neame. Exhibit "G." E. A. Neel, Notary Public. Identified, Chas. S. Keith.

Contract.

This agreement made this 30th day of January, 1905, by and between Louisiana & Texas Lumber Co., Kennard, Texas, and the Bonner Oil Co., of Houston, Texas, as follows:

In consideration of Louisiana & Texas Lumber Co., buying their entire supply of Lubricating and Illuminating Oils and Greases for a period of one year, commencing 30th day of January, 1905, from the Bonner Oil Co., the Bonner Oil Co., agrees to sell Oils for the following prices and terms:

Terms: 2 per cent. off in 30 days.

1420	Bayou City Valve	@ 50¢	per gallon.
	Climax Cylinder Oil	@ 40¢	" "
	New Era Valve Oil	@ 29¢	" "
	Dark Valve Oil	@ 25¢	" "
	King Cylinder Oil	@ 28¢	" "
	Extra Castor Machine Oil	@ 18¢	" "
	Climax Engine Oil	@ 22¢	" "
	"B" Engine Oil	@ 18¢	" "
	Red Engine Oil	@ 17¢	" "
	Summer Black Oil	@ 08¢	" "
	Winter Black Oil	@ 08¢	" "
	Beaumont Prime White Oil (Wood Barrels)	@ 10¢	" "
	Corsicana Prime White Oil " "	@ 11¢	" "
	Corsicana Water White Oil " "	@ 12¢	" "
	National Light Oil " "	@ 14¢	" "
	Axle Grease (Barrels)	@ 2¼¢	per lb.
	Axle Grease (Pails)	@ 3¼¢	" "
	Cup Grease (Barrels)	@ 05¢	" "
	Cup Grease (Pails)	@ 06¢	" "

Our letter of December 27th, 1904, referring to guarantee to be a part of this contract.

Remarks: The above prices F. O. B. Kennard Mills, Texas, and the Bonner Oil Co., agrees to pay 50 cts. for lubricating Oil Barrels and $1.00 for Illuminating Oil Barrels, f. o. b. mill.

All oils are guaranteed to give perfect satisfaction.

BONNER OIL COMPANY,
Per J. S. BONNER.
LOUISIANA & TEXAS LUMBER COMPANY,
By THOS. MACKIE, *Gen'l Pur. Ag't.*

Approved:
W. C. PERRY, *Vice Pres.*

(Endorsed:) Bonner Oil Co. Jan'y 20th, 1905. Jan'y 30th, 1906. Kennard. Exhibit "H." E. A. Neel, Notary Public. Identified. Chas. S. Keith.

1421 Copy.

Memorandum of Agreement

made by and between: Louisiana & Texas Lbr. Co., Kansas City, Missouri, party of the first —, and Standard Oil Company, a corporation organized under the laws of the State of Indiana (Lubricating Department), party of the second part, whereby the party of the first part agrees to buy from party of the second part all the Petroleum Oils and Greases, and also, such other products as are named in the list below, which the party of the first part may use in its plant,—but not for sale, for One (1) year from Jan. 1st, 1906, *190–*, at the following prices for the goods named: the maximum quantity of each grade not to exceed the number of barrels mentioned as estimated Yearly Consumption, without the consent of the party of the second part.

It is understood that this agreement does not include any Oils to be used for fuel or Illuminating purposes, except where such Oils are burned in Torches and Miners' Lamps.

Estimated yearly consumption.			Prices. Cts. per gallon.	Estimated yearly consp.			Prices. Cts. gal.
—	Bbls.	Red V Cylinder.....			Bbls	Arctic Engine.....	
—	"	600 W Cylinder.....	70—17 %		"	Vacuoline.	
—	"	Rarus Cylinder.....			"	V. Dynamo.....	
—	"	20th Cen. Cylinder..			"	Heavy Machine....	
40	"	Capitol Cylin-er....	36		"	Arctic Machine....	
—	"	Vax Cylinder Oil....	55—17 %	100	"	Renown Engine ...	25½
—	"	#8 Cylinder Oil ...	30		"	Str. Gas Engine ...	
—	"	#66 Cylinder Oil....	31		"	Eldorado Castor ...	
—	"	Dark Valve Oil.....	28		"	Eldorado Engine ..	
—	"				"	Atlantic Red	9½
—	"					Euc. Red Engine ..	15
—	"				"	Gratiot Cas. Mach..	15½
40	"	Summer Lub. Oil #2.	7				
—	"	Winter Lub. Oil #2. (Wood Barrels.)	8			Greases.	Cts. lb.
250		Prime White.....	9	10	Bbls.	Arctic Cup	4
—		Eupion Oil..... (Iron Barrels.)	11	Hf.	"	Arctic Cup	
					Tins	Arctic Cup	
					Bbls.	Standard Carnk Pin.	
					"	#1 Arctic Campb...	
						Mica Axle Grease..	
				5	"	Golden Ax. Grease.	2½

Above prices are in bbls., f. o. b. Kennard, Texas.

1422 If taken in half-barrels 2 cents per gallon will be added to barrel price; if taken in 10-gallon cans 8 cents per gallon will be added to barrel price; if taken in five-gallon cans 10 cents per gallon will be added to the barrel price. If party of the first part furnishes cars, 3 cents per gallon will be added to barrel price to cover cost of filing same.

Terms: 60 days from date of invoice, subject to discount of one (1) per cent. for cash in ten days, payable in New York or Chicago Exchange.

All orders will be filled with reasonable promptness, but fires, strikes, differences with workmen, or any unavoidable cause beyond the control of the party of the second part, shall excuse delay in filling orders.

If, during the life of this Agreement, the financial responsibility of the party of the first part becomes impaired or unsatisfactory to the party of the second part, cash payments with above discount, or satisfactory security may be demanded by the party of the second part.

The party of the second part agrees to furnish the above named goods on the terms and at the prices stated, guaranteeing said goods to be uniform in quality, and, at all times, up to their standards.

Date of Execution: January 31st, 1906.
Town: Kansas City.
State: Missouri.
Business: Coal & Lumber.
Salesman: C. W. Mayer.

(Signed) STANDARD OIL CO.,
Per C. W. MEYER,
Mgr. La. & Texas Lbr. Co.,
By CHAS. S. KEITH, *G. M.*

Approved as to form:
DAN'L B. HOLMES, *Gen. Att.*

(Endorsed:) Standard Oil Co. Jan'y 31st, 1906. Dec. 31st, 1906. Kennard. Exhibit "I." E. A. Neel, Notary Public. Identified. Chas. S. Keith. No. 24,551. Filed May 31, 1907. D. J. Pickle, Clerk.

1423 *Memorandum of Agreement*

Made by and between Central Coal & Coke Company of Kansas City, Missouri, party of the first, and Standard Oil Company, a corporation organized under the Laws of the State of Indiana (Lubricating department), party of the second part, whereby the party of the first part agrees to buy from party of the second part, all the Petroleum Oils and Greases, and also, such other products as are named in the list below, which the party of the first part may use in its plants, but not for sale, for One (1) year from January 1st, 1903, at the following prices for the goods named; the maximum quantity of each grade not to exceed the number of barrels mentioned as Estimated Yearly Consumption, without the consent of the party of the second part.

It is understood that this Agreement does not include any oils to be used for fuel or Illuminating purposes, except where such Oils are burned in Torches and Miners' Lamps.

Q. Changes, however, were made in the——
A. Some changes in the restaurant, I believe.
Q. The restaurant was abolished?
A. Yes, sir, and rooms were rented that we had on the eighth floor.
Q. They were sub-let?
A. Yes, sir, and things of that kind.
Q. The size of the office was reduced—that is, the rooms were reduced?
A. Yes, sir.
Q. There were some changes in the heads of departments, were there not?
A. I was trying to think about that. I don't recollect now just what they could be. I think there was a change in the accounting department. Mr. Gruet resigned during that time—he left
1450 the company.
Q. And Mr. Backus was appointed controller?
A. Yes, sir.
Q. Some transfers were made of employees from one department to another, were there not?
A. Yes, I think there was.
Q. And some employees were let out?
A. Yes, I think there were.
Q. Now, were there any other changes in the policy of the company, so far as the conduct of the business was concerned, made by Mr. Tinsley while he was here?
A. I don't know of any.
Q. Do you remember of his making a change in the manager of the Oklahoma division?
A. That change was made, yes, sir, during the time he was here. I think it had been talked about, though, for a good while before; it was consummated during his time here as vice president.
Q. Mr. Hathaway, the old manager, was let out, and Mr. Ebie was appointed in his place?
A. Yes. Mr. Hathaway was retired with a regular monthly compensation.
Q. There was a change made?
A. He was not discharged from the company—not let out entirely, you understand. He was retired on pay.
Q. On reduced pay?
A. Yes, sir.
Q. There was a change in the manner of keeping the books and accounts?
A. Well, I suppose there was. I have heard in a general way about that, changes in the reports and the manner of keeping the books, but that was not my department and I never bothered myself with it.
1451 Q. There was a change also in the Mexico Division, wasn't there, in the management of that Division?
A. Yes, I think there was. I think that occurred while he was here.

Q. Now, do you recollect any other?

A. There have been so many changes there that it was difficult to tell under whose direction they were made.

Q. Mr. Ryder, the manager in Mexico, resigned?

A. Yes, sir.

Q. And Mr. Cole was appointed?

A. Yes, sir, and there have been one or two changes since then.

Q. Do you know of any other changes made in Mexico in the personnel of the employees?

A. At that time, while Mr. Tinsley was here?

Q. At that time?

A. Several people left and went with Mr. Ryder, that were——

Q. When he quit?

A. When he quit. I don't recall now the names, just who they were.

Q. Do you recall any other changes that were made while Mr. Tinsley was here?

A. Among the employees?

Q. In any way, in the management of the company's business?

A. Why, no, I do not now—I don't recollect any.

Q. While Mr. Finlay was absent on sick leave, Mr. Tinsley acted as president of the company?

A. Yes, he was ranking officer at that time.

Q. Isn't it a fact that all that time Mr. Gruet was a member of the board of directors—during the time that he was a member of the board of directors he co-operated with Mr. H. C. Pierce in the management of the company's business?—the present company, I mean—with you and the other officers and directors here?

1452 A. Yes, sir, just the same as we did.

Q. Isn't it a fact that the present company has always been run as an independent company by its officers and directors?

Mr. ALLEN: We object to that as a conclusion, and not the statement of facts.

The COURT: The objection is sustained.

Judge PENN: Defendant excepts.

Q. So far as you know, the company has always confined its operations within the territorial limits that the old company was doing business in at the time of its dissolution?

A. I know of no change in that respect.

Judge STEDMAN: I don't see anything else we want.

Mr. ALLEN: Well, we offer some of the crosses in connection with what they offer. It's on page 297.

Q. Isn't it a fact that after Mr. Tinsley came out here and was elected as vice president of the Waters Pierce Oil Company and put upon the board of directors, and after he had assumed the active management or, as Mr. Pierce puts it, usurped the management of the Waters Pierce Company—isn't it a fact that he had rescinded a lot of things that had been done by the former board of directors? Did you not have meetings at which he dictated the

rescinding of numerous actions that had been theretofore taken by the board of directors? Isn't that a fact?

A. There was something of that kind done in connection with some committees, yes.

Q. He abolished the executive committee that you people had originally inaugurated, didn't he?

A. Well, I can't say that he did.

Q. Well, he had it done?

A. It was done by——

1453 Q. Done at his instance?

A. Done by the board of directors.

Q. Who composed that board that did that?

A. He was here; he was president.

Q. Who was present at the time it was abolished?

A. Mr. Tinsley, Mr. Finlay and myself.

Q. Didn't Mr. Tinsley dictate that that should be done, and you and Mr. Finlay acquiesced in it?

A. Well——

Q. Those are the facts, aren't they? Didn't he keep nagging and nagging at Mr. Finlay about things of that sort until he actually drove him away, physically?

A. I wouldn't swear to that. That statement has been made, but I wouldn't swear to it.

Q. You don't want to make that statement as a representative of the Standard Oil Company?

A. I don't want to make that statement personally.

Mr. ALLEN: Now, then, next is re-cross examination on page 302.

Q. Mr. Adams, it is a fact, is it not, that before Mr. Tinsley came here there was an executive committee that had general control of the business of the company, and that they fixed the prices at which the oil should be sold? That is a fact, isn't it? They passed finally upon it?

A. Yes, I think so.

Q. And after he came here he had that committee abolished?

A. It was abolished, yes.

Q. And then, during the time that he was here, the prices were fixed by the executive officers of the company?

A. Yes, sir.

Q. Now, this man Backus that you speak of who had been

1454 put in as controller—he came direct from the Standard Oil Company?

A. I think he had been in their employ previous to coming here.

Q. And Mr. Ebie, also, who went as manager of the Oklahoma Division?

A. It is my recollection that he did, yes, sir.

Q. Mr. Coale,—where did he come from?

A. He came from Cleveland.

Q. He was in the employ of the Standard Oil Company of Ohio at Cleveland?

A. I don't know.

Q. That is your information, isn't it?

A. I don't know whether he was with them then or not.
Q. He had been with them? You know he had been with them?
A. I know that the Coale family in Cleveland were with them. Whether he had worked for them or not, I don't know.

Judge STEDMAN: Now, we will read another portion of it.

Q. Mr. Backus has been discharged from the company's employ, hasn't he?
A. Yes, sir.
Q. And Mr. Coale has been discharged from the company's employ?
Q. The persons selected by the present management to succeed them are in charge of those offices, are they not?
A. Yes, sir.
Q. And those departments of the company's business?
A. Yes, sir.
Q. What are the functions of the executive committee? What duties do they perform?
A. Well, they pass on the appropriations for expenditures, for additional plants, and equipments and things of that kind.
1455 Q. I don't care about the details.
A. On the prices.
Q. Isn't it a fact that the different heads of departments, who themselves were members of that committee, refer to the committee questions arising in their different departments for the advice of all the committee?
A. Yes, sir, most all important matters, aside from the routine matters, which they attend to currently as they come up.
Q. The committee considered them and passed upon them and left them for the president, who finally determined on what action should be taken?
A. Yes, sir.

Judge PENN: If the Court please, we will ask at this time to be permitted to read the balance of the depositions of Clay Arthur Pierce and A. M. Finlay which the plaintiff read from a few days ago.
The COURT: I know of no reason why you should not read it when your time comes.
Judge STEDMAN: May it please Your Honor, I don't wish to be in the attitude of being unduly persistent, but I would like to make a statement to the Court in reference to our offer to read the omitted portions of the depositions of the witnesses A. M. Finlay and Clay Arthur Pierce. A few days ago—I don't remember exactly—when the State read portions of the depositions of those witnesses it was our intention immediately upon the State's concluding the reading of those depositions, to read parts that had been omitted, but it happened that the State closed, if I remember correctly, at the adjourning time on a certain afternoon. Our time for offering the
1456 remaining portions was next morning. When I came in the court-room I discovered that Judge Penn, who had these depositions with the portions marked that had been omitted, in his grip—had not arrived. I then received a telephone message from

Judge Penn that his watch had stopped and that he would be here as soon as he could, and asked if the Court and counsel and jury were all here. Without inviting attention to that matter, I made no suggestion and just let the Court proceed with the regular order without reference to these portions of the depositions. Now, we think, may it please Your Honor, that we should have then been entitled to read the omitted parts, and we should have done so but for the facts that I have stated. We think that we ought to have a right to read them now, for the reason that those parts that were not read by the State are portions of the depositions of the witnesses as well as parts that were read, and that it is proper now that the entire depositions should go before the jury before the State concludes the introduction of its testimony, and we request the Court to now permit us to read the portions of the testimony of these witnesses which were not read by the State.

Mr. ALLEN: Those were the depositions they took themselves, and we read the cross examination where we drew out certain facts.

Mr. BATTS: We don't understand really that they have got any right to make out their case as we go along, anyhow.

The COURT: The reason the Court has permitted counsel for defendant to offer the remaining portions of depositions that the State has offered other portions from, was that the jury might get it connected at one time—have the whole deposition before them. These two depositions mentioned were read by the State—that is, the portions the State desired to read—and, without reference to whether it was any fault on the part of counsel for defendant or not, the fact remains that the other part was not read then. The introduction of other evidence has intervened, the reading of other
1457 depositions has intervened, and no good purpose would be subserved now in reading these portions of the depositions. The jury will not get the entire depositions because of the lapse of time. I understand that the State is about to close its case, and I will permit it to do so without going back and reading parts of depositions the other parts of which were read several days ago.

Judge STEDMAN: We except, Your Honor.

C. P. ACKERT, a witness for the plaintiff, testified as follows:

(Examination by Mr. BATTS:)

Q. Mr. Ackert, you are general manager of the Waters Pierce Oil Company?

A. I am.

Q. How long have you occupied that position?

A. Since July 1, 1903, I think.

Q. What were your duties prior to that time?

A. I was assistant general manager.

Q. Performing the same duties that you now perform as general manager?

A. No, sir.

Q. Well, prior to the time that you were assistant general manager, were you in fact at any time manager of the company?

A. Yes, sir—of the whole company?

Q. Yes, sir, of the whole company?
A. No, sir.
Q. Isn't it a fact that you performed the duties of general manager for a while prior to the time you were designated as assistant manager?
A. Not the duties, no, sir, altogether.
1458 Q. When did you first become connected with the Waters Pierce Oil Company?
A. In March, twenty-three years ago; in March, 1884, I believe.
Q. How long have you been with the company at St. Louis?
A. Almost thirteen years.
Q. Beginning there, then, about 1893?
A. Yes, sir.
Q. What were your first duties there?
A. I was assistant manager in the lubricating department.
Q. And that employment continued up to what time?
A. About five years.
Q. Then what was your position?
A. I was practically up to that time—up to the time that I was appointed general manager.
Q. Practically assistant in the lubricating department?
A. I was assistant in the lubricating department up to the time I went in with——
Q. Now, isn't it a fact that before you were appointed general manager that you discharged the duties of a general manager?
A. Before I was appointed general manager?
Q. Yes, before you got that title?
A. No, sir.
Q. From the time of the—just antecedent to the reincorporation what were your duties.
A. As I remember, now, I was in Mr. Andrew Finlay's office.
Q. Doing what?
A. Doing some corresponding, looking after some Mexico matters.
Q. Now, upon the reincorporation were your duties in any sense changed?
A. No, sir.
Q. Continued to perform the duties you had theretofore performed?
1459 A. I did.
Q. Upon the same salary?
A. Yes, sir.
Q. In the same room?
A. Yes, sir.
Q. At the same desk?
A. I think so.
Q. And that continued up to the time you were appointed general manager in 1903?
A. What do you mean?
Q. I mean the employment you were then engaged at.
A. Yes, sir.
Q. Without any change?
A. In title?

Q. In title or change in fact?

A. I have forgotten now whether there was any change in title; I was appointed to the present place on July 1st, 1903—the title.

Q. Well, did your duties as general manager begin prior to that time?

A. No, sir, they did not.

Q. They were concurrent with your appointment as general manager?

A. Yes, sir.

Q. Now, what are your duties as general manager?

A. General correspondence with all the division managers, looking after the marketing of our oils, placing of agents, and so forth.

Q. Employment—hiring of employees?

A. In part, yes, sir.

Q. Fixing of salaries?

A. In part.

Q. Determining the prices of oil at points where you have competition?

A. At all points.

1460 Q. At all points. Do you know the parts of the United States that the Waters Pierce Oil Company was doing business in prior to the reorganization or reincorporation?

A. Yes, sir.

Q. Do you know the line that divided what was called Standard Oil Company territory from the Waters Pierce Oil Company territory?

A. I knew where we were doing business.

Q. Well, I will ask you again, if you know the line dividing the territory?

A. I could not draw a line, no, sir.

Q. You know where you were doing business and where the Standard Oil Company was doing business?

A. I know all the towns we were doing business in.

Q. And where the Standard Oil Company was doing business?

A. Well, I assume they were doing business. All I know is where our agencies were.

Q. You have given testimony heretofore with reference to this matter, have you not, in the case in Missouri?

A. Yes, sir.

Q. In that you stated, did you not, that you knew where the Standard Oil Company was doing business and where the Waters Pierce Oil Company was doing business and the dividing line between them?

A. As I stated, I think, that I knew where all our agencies were. As far as the dividing line was concerned, I don't think I could draw any imaginary line.

Q. Now, in appointing agents, you tell him where he shall do business and where he shall not, do you not?

A. No, sir, I don't know as I do. I think that the division manager understands that; he knows where his agencies are.

Q. You then, give no instructions to division managers or any-

body else with reference to the points at which you are doing
1461 business and with reference to where the Standard Oil Company is doing business?

A. I don't remember that I have.

Q. Did you or not so testify in the case to which I have referred?

A. Testify what?

Q. Did you so testify in the case to which I have referred—that you had communicated to your managers and your agents and employees where the line was?

A. I don't remember that I did.

Q. You don't reny that you did?

A. I could not say positively.

Q. Has there been any change since the reincorporation?

A. In what?

Q. In the matter of the line between the Standard Oil Company and the Waters Pierce Oil Company?

A. Not that I know of.

Q. You know of none?

A. I don't know of any.

Q. As general manager it is a part of your business, isn't it, to extend the business of the Waters Pierce Oil Company into any territory that may need increased facilities or need oil, is that true or not?

A. Yes, sir.

Q. Have you since the reincorporation made any extensions over this line between the Standard Oil Company and the Waters Pierce Oil Company?

A. Our extensions have been entirely tributary to the agencies which we already had.

Q. Well, do you mind answering the specific question I put? Have you or not made any extensions into the territory that had been theretofore claimed by the Standard Oil Company?

1462 A. I don't know that I have, no, sir.

Q. Well, you know that you have not?

A. I don't know of any.

Q. You don't know of any?

A. No, sir.

Q. You have not then, at any time since the reincorporation invaded Standard Oil Territory?

A. Not that I know of.

Q. And you don't know of the Standard Oil Company at any time coming into your territory?

A. Yes, sir.

Q. Where?

A. In Louisiana.

Q. In Louisiana?

A. Yes, sir.

Q. Whereabouts?

A. Shreveport, Lake Charles—eight or ten points in Louisiana.

Q. Now, when was that Mr. Ackert?

A. Oh, a year ago—about a year ago.

Q. When?

A. About a year ago.
Q. Since the institution of the suit in Missouri against the Waters Pierce Oil Company?
A. I could not say—just about a year ago.
Q. Now, how did you happen to find it out?
A. I found it out from our manager in that division.
Q. He reported that the Standard Oil Company was invading your territory?
A. Yes, sir.
Q. What did you do?
A. We immediately went after it, the same as any other competitor.
1463 Q. Well, you referred that to 26 Broadway?
A. No, sir.
Q. Didn't make any report to Mr. McNall, or your commercial agent up there?
A. No, sir.
Q. Made no protest to the Standard Oil Company?
A. Not that I know of.
Q. Well, you took the matter up at executive meetings, did you not?
A. I don't know that I did.
Q. Well, I asked you if you did or not?
A. No, sir, I did not.
Q. To whom did you report the fact that you had found out that the Standard Oil Company was invading territory which had been agreed that the Waters Pierce Oil Company should alone be in?
A. Mr. C. A. Pierce, president of the company.
Q. You reported to him?
A. Yes, sir.
Q. Now, what did you and Mr. Pierce do with reference to it?
A. We immediately put in some more salesmen in Louisiana and went after the business.
Q. How did you go after the business?
A. Just the same as we would any other competitor.
Q. Reduced prices?
A. If they reduced their prices and it was necessary for us to secure business to reduce prices, we did it; in many cases we didn't have to do it.
Q. Now, after the suit was instituted in Missouri and the Standard Oil Company invaded your territory in Louisiana you put out more men and additional equipment and where necessary lowered prices to meet the competition of the Standard Oil Company?
A. Yes, sir.
1464 Q. Now, then, they haven't come into the State of Texas, have they?
A. Not that I know of.
Q. And you haven't found it necessary to increase your equipment on account of Standard Oil competition?
A. No, sir, not——
Q. Or increase the number of your men?
A. No.

Q. Or lower your prices on account of Standard Oil Company competition in Texas?

A. No, not on account of Standard Oil Company, because in Texas we meet conditions as they come up and as rapidly as they develop.

Q. I say, you have not done any of these things on account of Standard Oil Competition in Texas?

A. No, sir, our present equipment warrants not doing that.

Q. Now, what character of claim does the Standard Oil Company make with regard to its right under the agreement with the Waters Pierce Oil Company to go into that territory?

A. I don't know; I have never discussed that part of it.

Q. You don't know what is the basis of their claim to disregard the agreement as to territory?

A. I don't have any idea.

Q. Have you no idea of what it is?

A. No, sir.

Q. The result of their competition in Louisiana, isn't it that there here been a general lowering of prices?

A. In some places, yes, sir.

Q. You have also been compelled to put in a better quality of oil over there?

A. No, sir.

Q. What do you put in over there?

A. It's Prime White and Eupion.

1465 Q. Where do you get that?

A. From the same plants that we get it in Texas.

Q. That is to say, you put in Chaison Eupion?

A. No, sir.

Q. You don't use that?

A. No, sir.

Q. Can't use that over there?

A. No, sir.

Q. Well, can you use it over there?

A. No, sir, I don't think we can.

Q. That would be the easiest point to get it, wouldn't it?

A. That or Corsicana.

Q. Well, it would be cheaper to get it from Chaison?

A. Well, I don't know; I could not say whether it was cheaper or not or better.

Q. It is nearer the field, isn't it?

A. Yes, sir, some parts.

Q. Now, you haven't found it necessary to get a better grade of oil than that which you can get at Corsicana or Chaison on account of Standard Oil Company competition in Louisiana?

A. The oil we have always furnished there is the best that can be obtained.

Q. Well, I am asking you, you still furnish this oil you get at Corsicana and at Chaison to your Louisiana trade, do you?

A. We get the best oil we can obtain.

Q. Now, will you answer my question?

A. What kind of oil that we get at Chaison, do you refer to?

Q. Well, I am talking of what you call Eupion.
A. No, sir, we get no Eupion oil at Chaison.
Q. You don't furnish any Eupion oil from Chaison to the Louisiana trade?
1466 A. No, sir.
Q. It is a fact, isn't it, that you have at times in the past gotten some of this inferior oil at Chaison and used it for Eupion?
A. Not that I remember of; we may have gotten a few tanks, but it was not continued; I could not say positively on that.
Q. You were notified, were you not, by the East Texas division manager that the Eupion oil was even worse than the Corsicana S. W. 112?
A. I don't remember that I have.
Q. The Central Texas man—you don't remember that your attention was called——
A. We were talking about Louisiana, weren't we?
Q. Well, I am asking you about the Central Texas man now, if he didn't so notify you?
A. The question, please?
Q. I asked you if the Central Texas man didn't notify you that the oil you got from Chaison and you were selling as Eupion was inferior even to Corsicana S. W. 112?
A. We may have shipped a few tanks in there, but it was discontinued at once on statements by him.
Q. Well, did you have a few tanks?
A. Yes, sir.
Q. Now, you did continue to ship into Louisiana this Texas oil, notwithstanding Standard Oil Company competition?
A. That and the Neodesha or Sugar Creek or the Northern refineries for Eupion.
Q. Now, does the Standard Oil Company also get its oil from Neodesha and Sugar Creek and ship into Louisiana?
A. I could not say.
1467 Q. It doesn't go out in the same car—a shipment to the Standard Oil Company doesn't get into the same car?
A. No, sir, absolutely.
Q. How do you know?
A. Because our oil goes into our own tanks.
Q. What is your course of business in getting it there—how do you get it there?
A. In tank cars.
Q. If you want some Neodesha oil you make requisition on the Standard Oil Company for it?
A. That is handled in another department; I have nothing to do with that; I don't know who we place orders with.
Q. You don't know?
A. No, sir, I don't know; it is out of my department.
Q. You have no information except in your own department?
A. That's all.
Q. About the business of this concern. You have been there for many years?
A. In St. Louis about thirteen years.

Q. You don't know where they get the oil or how they get it?

A. I would like to testify on facts; I would not like to testify on hearsay.

Q. Well, as manager there, and as an officer of the company and as a member of the executive committee of that company, am I to understand that you don't know where oil is bought?

A. I know various refineries where it is bought.

Q. You know as much about that as you do that it is taken from Neodesha down into Louisiana?

A. I know that orders are placed on Corsicana refinery or Sugar Creek and Neodesha and any other place where we purchase our supplies, but I can't say further than that.

1468 Q. You place them yourself?

A. No, sir.

Q. How did you acquire that information?

A. I simply have knowledge that they are placed, but I don't place orders personally or in my department.

Q. Now, these other matters I have been interrogating you about, don't you know that in the same way, as to where you get it and who you get it from and prices that are paid for it?

A. That only in a hearsay way. That is out of my department, so far as the buying of our supplies.

Q. It's a part of the business plan of the concern, is it, to confine knowledge of the employees to their particular department?

A. Not altogether.

Q. But notwithstanding your long stay there and notwithstanding you are an important officer of the company and member of the executive committee, you don't know anything at all about the prices or from whom the oil is bought; is that true?

A. I have stated that the oil was bought from the Corsicana refinery and Neodesha and Whiting; they are placed on those refineries—I could not say with whom they are placed.

Q. They are filled from those refineries, you mean?

A. Yes, sir.

Q. Now, as far as the Corsicana refinery is concerned, you take the entire output there, do you not?

A. I could not say that definitely.

Q. Well, is that your information?

A. It is possible we do.

Q. Well, you know that is the case, do you not?

A. I could not say positively.

Q. You were so notified by your Central Texas division manager, are you not?

1469 A. He has made those statements, yes, sir; there may have been some changes since then—I don't know.

Q. You don't know?

A. I could not say positively.

Q. Now, isn't it part of your business as general manager up there to determine what shall be done with the output of the Corsicana refinery?

A. No, sir.

Q. Who does that?

A. Mr. A. M. Finlay.
Q. Without consulting you?
A. He may consult me at times.
Q. What do you do with that part of the output of the Corsicana refinery that you don't sell as Eupion oil?
A. As I understand it, they make two different grades there.
Q. You take it all?
A. I can't say; it is possible we do.
Q. Sir?
A. It is possible we do; I could not say definitely.
Q. You don't know, then, what is done with the balance of that oil?
A. I could not say definitely, no, sir.
Q. Now, don't you acquire any information up there by reason of your connection with the company—what is your information about it?
A. As to what?
Q. As to what is done with the balance of the output of the Corsicana refinery?
A. I could not say.
Q. You don't want to make any statement about it?
A. I could not say.
1470 Q. You don't know about that?
A. I could not say.
Q. When did you learn that the Standard Oil Company owned a majority of the stock in the Waters Pierce Oil Company?
A. Only so far as the papers—I have only seen it in the papers.
Q. You have no knowledge of that matter at all, then?
A. No, sir.
Q. You have never heard that discussed there by Mr. Pierce?
A. I have not, no, sir.
Q. Did you hear him discuss his stock ownership at any time?
A. I have not seen Mr. Pierce, only for a short time, in a long time.
Q. Yes, sir, but I didn't ask you that question.
A. I have not heard him discuss it.
Q. For a long time?
A. I have not heard him discuss it at all.
Q. You have never heard him make any statement about it?
A. No, sir.
Q. Didn't you make that statement in the other case?
A. I don't think I did; I don't remember.
Q. Now, who is the executive committee there?
A. Advisory committee?
Q. Executive committee?
A. We have an advisory committee.
Q. Have you an executive committee?
A. Not that I know of.
Q. Never have heard of the executive committee—never have heard of that?
A. Yes, sir.
Q. What became of it?

A. Why——

1471 Q. What became of the executive committee?

A. There is a committee.

Q. Well, there is an executive committee?

A. Well, there is a committee composed of the officers of the company.

Q. It is called the executive committee, isn't it—is it or is it not?

A. It is called the advisory committee.

Q. Well, it was formerly called the executive committee, wasn't it?

A. Might have been.

Q. Well, wasn't it?

A. It might have been.

Q. Well, you know it was, don't you?

A. Yes, there was an executive committee.

Q. Now, you have been a member of that advisory committee, haven't you?

A. Yes, sir.

Q. How long?

A. Since it was organized.

Q. Since its organization?

A. Yes, sir.

Q. The advisory or executive committee has before it very frequently communications from 26 Broadway, hasn't it?

A. I don't remember of any communications between St. Louis and 26 Broadway. We have now at 23 Broad Street a commercial agent.

Q. How long since you have had him there?

A. About fifteen months.

Q. Prior to that time you had men at 26 Broadway, didn't you?

A. I understand we did.

Q. Man that was on your pay-roll?

A. I could not say.

1472 Q. Don't know about that?

A. I don't.

Q. What was his name?

A. R. H. McNall.

Q. R. H. McNall. You had frequent communications from him, didn't you?

A. Me?—no, sir, I didn't.

Q. Did the company?

A. I presume they did, yes, sir.

Q. Officers of the company?

A. Naturally so, if he was our commercial agent.

Q. These matters were referred to the executive or advisory committee?

A. They were probably talked of in the committee.

Q. Then they came before the committee?

A. Probably so, yes, sir.

Q. Do you know who Mr. McNall was?

A. Do I know who he was?

Q. Do you or not?

A. I have never met the gentleman.

Q. What training had he with the Waters Pierce Oil Company prior to the time that he was appointed commercial agent?

A. I have never met the gentleman; I don't know anything about him or what training he might have had.

Q. Well, you know a number of gentlemen with the Waters Pierce Oil Company or know of them, that you have never met?

A. That I have never met?

Q. Yes.

A. I don't know of any now.

Q. Did you ever hear of Mr. McNall as an employee of the Waters Pierce Oil Company antecedent to the time he was designated
1473 as commercial agent?

A. No, sir, he was not in the employ of the company before that.

Q. Did you ever have any connection with him prior to that time?

A. Not any more than other men whom we employ.

Q. It's a rule to secure competent men by promotion, isn't it?

A. If we have them, otherwise we employ them on the outside.

Q. Now, your present commercial agent, where did you get him?

A. He was employed.

Q. He was an old employee?

A. No, sir, never had been an employee.

Q. Who employed him?

A. Mr. H. C. Pierce.

Q. Your other important officers, persons that conduct the general affairs of the company, have been people who have been raised up in the service and know something about it?

A. Part of them.

Q. Who have not?

A. Mr. Edward C. Stanley, the controller.

Q. Whose business is simply to audit accounts?

A. General finances of the company, handling reports of——

Q. Having nothing to do with the active business except keeping its accounts and its money?

A. He has some, yes, sir.

Q. Now, what training do you know of Mr. McNall having in the oil business prior to the time he was employed?

A. Only what I have heard and seen in the papers.

Q. Had he had any training at all?

A. I understand he had, yes, sir.

Q. You understand he was clerk in Mr. Tilford's office?

A. I have heard that and seen it in the papers.

1474 Q. Now, at the time he was employed, you didn't know anything at all about it, did you?

A. No, sir, no more than our present commercial agent.

Q. The executive committee didn't know anything about it?

A. No, sir, only he was employed by Mr. Pierce.

Q. Was that matter referred to the executive committee at all?

A. By whom?

Q. By Mr. Pierce?

A. No, sir, not until after he was employed.

Q. Now, the details of that business, such for instance as deter-

mining whether or not a rebate shall be given to the Rotan Grocery Company, is determined by the executive committee, isn't it?

A. It is considered there.

Q. Who determines it?

A. The Committee.

Q. The Committee?

A. Yes, sir.

Q. Whether or not a tank station shall be put in at any place is determined by the executive committee?

A. Yes, sir.

Q. As to whether or not a horse shall be bought is determined by the executive committee?

A. Yes, sir.

Q. But when you get a man to attend to your New York business, buy your supplies, buy all your oils and engines and everything of that sort, you don't take that into consideration in your executive committee?

A. Our present commercial agent, who was appointed in March, was employed on account of the death of the commercial agent we had had for about a year, and it was necessary to do it very
1475 quick, and Mr. Pierce arranged it personally and advised the committee of what he had done.

Q. The one preceding him was also arranged at 26 Broadway, wasn't it?

A. I don't know as it was.

Q. Well, was that matter up before the executive committee?

A. I don't remember.

Q. Did the executive committee consider whether it should discharge Mr. McNall and employ Mr. What's-his-name?

A. Mr. Rundel.

Q. Mr. Rundel?

A. I have forgotten; I could not say; at that time I was out of the country, I was in Mexico on business and I could not say.

Q. Those things are all put down in the minutes of the executive committee, are they not?

A. They may be.

Q. Well, do you know or not?

A. I could not tell you; I have not read any of the minutes or seen them.

Q. Don't you hear the minutes of the committee read?

A. I hear them read, yes, sir.

Q. How big a book is that, by the way?

A. I don't know as it's in a book.

Q. What is it?

A. Simply a memorandum kept of what is done.

Q. It is not put in a book?

A. No, sir.

Q. Is that volume of business so great that it could not be easily brought to Texas?

A. I could not say; I don't know anything about how it is kept; I simply hear it read.

1476 Q. Don't know anything about it, then?
A. No, sir.
Q. Now, tell us in a general sort of a way what this agent does at New York?
A. Attends to our shipments for Mexico, purchases stills, boilers, piping, for the supply of the refineries or for the refineries in Mexico. Attends to our shipping from there. Attends to crude oil, and any other matters which they may have up that is necessary to handle in New York.
Q. You have quite a good deal of business of that kind?
A. Yes, sir.
Q. Very necessary that you have somebody to attend to that?
A. Yes, sir.
Q. How did you get along during the time that testimony was being taken in the Hadley case and Mr. McNall was absent from New York?
A. I didn't know he was absent.
Q. His absence didn't so affect the business there that you didn't find out about it?
A. I was in Mexico at the time the testimony was taken.
Q. You were in Mexico and Mr. McNall was there?
A. I was down there in Mexico re-organizing the business in Mexico; I don't know where Mr. McNall was. Your information is the first I ever had that he was not——
Q. You did not know he was absent when Mr. Hadley was taking the testimony?
A. I did not.
Q. How did the company get along during that period?
A. I can't say; I didn't know he was absent.
1477 Q. Now, Mr. McNall during the time he was commercial agent there made all sorts of recommendations to you as to how you should conduct your business, didn't he?
A. No, sir.
Q. Didn't?
A. No, sir.
Q. You know his signature?
A. I don't think I would.
Q. Do you know that which is accepted by your office as his signature?
A. I couldn't say that I do; I have never had any correspondence with Mr. McNall.
Q. Well, I will ask you if that isn't Mr. McNall's signature?
(Hands letter to witness.)
A. Oh, I couldn't swear to it.
Q. That is what you accepted there as his signature? Haven't you seen hundreds of them?
A. I have seen them, but I couldn't say whether it is his signature or not.
Q. Well, it is R. H. McNall on Waters Pierce Oil Company's blanks, isn't it, and accepted as the signature of Mr. McNall in your office?
A. It may be.

Q. I am asking you if it isn't.

A. I have had no correspondence with Mr. McNall.

Q. I didn't ask you that; I asked you if that isn't that which is accepted as the signature of Mr. McNall in your office and the office of the Waters Pierce Oil Company at St. Louis, and is accepted by the executive committee of the Waters Pierce Oil Company at St. Louis as the signature of Mr. McNall, and acted on?

1478 A. If the letter came from Mr. McNall, I wouldn't know whether it is from him or some one else; I presume that is Mr. McNall's signature, but I couldn't swear to it.

Q. Well, I will ask you to specifically answer my question,—isn't that the same signature that is accepted by your office and by the executive committee as the signature of Mr. McNall in your office, in the St. Louis home office?

A. I have no correspondence in my office with Mr. McNall.

Q. I didn't ask you that.

A. It may be his.

Q. I didn't ask you that; I asked you if you didn't accept that as his signature?

A. I couldn't say.

Q. You didn't accept it?

A. I couldn't say, because I have never had any correspondence with Mr. McNall; it may be his name.

Q. You know it is his name, don't you?

A. That is his name, but I mean his signature; I couldn't swear.

Q. It is a fact, is it not, that when letters are received from Mr. McNall that they are passed around to you and other heads of departments and members of the executive committee?

A. There are no letters received from Mr. McNall.

Q. Well, they come to your office, do they not, and are they not passed around to you and other people there?

A. Sometimes they are.

Q. Well, now, when they are passed around there, do you accept that as his signature?

A. I have seen the signature before.

Q. Haven't you seen it a number of times before?

A. I have seen that signature before.

Q. And haven't you accepted that as the signature of Mr. McNall?

1479 Mr. ODELL: We object to that manner of examination, because the witness has stated time and again that he never saw Mr. McNall, didn't know Mr. McNall, didn't know his signature, and that he has had no correspondence with him.

The COURT: The objection is overruled.

Q. Well now, will you answer that?

A. (Question read by stenographer.) I can't say that I can swear that that is his signature.

Q. I didn't ask you to swear that; I asked you if you didn't accept that as his signature and act upon it?

A. It is possibly his signature; I have seen letters with that same signature before that came from our commercial agent.

Q. And you acted upon it as his signature?
A. We considered it as his signature.
Q. And acted upon it?
A. I don't know that we did; that was a matter for the executive committee to decide.
Q. I am not asking you whether you accepted his recommendations, but whether you acted upon that as his signature, assumed that to be his signature and accepted it as his signature?
A. We probably did.
Q. You did, did you not?
A. We probably did. I don't know the man, and I don't know; all I know is what I see there, and have seen before.
Q. Now, the course of business, wasn't it, was for a letter which you had any interest in coming to the office from Mr. McNall, was for that to be brought around to you and for you to read——
A. I have read a great many letters from Mr. McNall.
Q. Well, do you mind answering the question I have asked?
1480 A. It might have been brought around; I have read letters from Mr. McNall.
Q. I will ask you again if that isn't the course of business, wasn't the course of business when a letter that pertained to any of your business came from Mr. McNall, for that letter to be sent to you—to be brought to you, to be read by you, and if it wasn't read by you?
A. It might have been sent to me; yes, I have read lots of Mr. McNall's letters that have been passed around to me.
Q. Frequently you would note upon that the fact that you had read it, would you not?
A. Possibly so.
Q. Well, I will ask you if that wasn't frequently the case, that you noted it?
A. If I had read it I probably noted it; I usually do on all letters.
Q. Now, whenever a letter was read before the executive Committee that fact was noted, was it not, stamped on the letter itself?
A. I presume it was.
Q. (Hands witness another letter.) That is the same signature that was on the other letter that has been shown to you?
A. It looks like it.
Q. And that? (Counsel hands witness another letter each time.)
A. Looks like the same.
Q. And that?
A. It looks like the same one.
Q. And that one?
A. It looks like it.
Q. And that?
1481 A. That looks like it.
Q. And that one?
A. It looks like the same one you had first.
Q. (Same letter.) You would say it was the same?
A. It looks like it.
Q. And that?
A. It looks like it.
Q. And that one?

A. That looks like it.
Q. And that?
A. That looks like it.
Q. And that?
A. That looks like it.
Q. And that is the same is it not?
A. That looks like it.
Q. (Same letter.) Same signature isn't it?
A. It looks like the same one.
Q. And that one?
A. That looks like it.
Q. You know the signature of Mr. A. M. Finlay?
A. I think so, yes, sir.
Q. Now, that is the signature of Mr. McNall there, isn't it?
A. That looks like the same one you had first.
Q. And whose handwriting is that below?
A. That looks like Mr. Finlay's.
Q. (Hands witness another letter.) Did you ever see this handwriting before?
A. I don't know that I did, no, sir.
Q. (Another letter.) Now, that is the same signature as that which you have examined?
A. That looks like the first one.
1482 Q. And that also?
A. Same way.
Q. And that?
A. Same way. (Counsel handing letter with each question.)
Q. You don't know whose that is?
A. No sir, I do not.
Q. Now, how about that signature?
A. That looks like the first one you had.
Q. Looks like the correspondence which you have had here all the time?
A. Probably is.
Q. Now, what is the significance of that stamp up there in the corner?
A. Looks as though Mr. Gruet had got it and transmitted it to Mr. A. M. Finlay, vice president.
Q. That is the stamp that is used to indicate that fact?
A. That is the stamp he probably used in transmitting it.
Q. (Another letter.) Now, with reference to that signature?
A. That looks like the first.
Q. And that?
A. The same.
Q. And that?
A. The same.
Q. Look at that there, this "A. J. H" up there?
A. A. J. Hutchinson, I assume, that was his initials. He was clerk.
Q. What about that signature?
A. That looks like the first letter.

Q. Looks like all the other signatures you have received there in your office from R. H. McNall and acted upon?
A. It looks like it.
Q. And that?
1483 A. That looks the same way.
Q. And that one?
A. That is like the first.
Q. And that?
A. Same.
Q. And that?
A. The same.
Q. And that?
A. That looks the same.
Q. And that?
A. That looks the same.
Q. And that?
A. Looks like the same.
Q. And what about that?
A. That looks the same, like the same.
Q. And that?
A. Looks like the same.
Q. And that?
A. That looks like it.
Q. And that one?
A. That looks like it.
Q. What about that?
A. That looks like it.
Q. Is that the signature of Mr. McNall?
A. That looks like the first one.
Q. That is the signature accepted there as Mr. McNall's signature?
A. That looks like the first letter you showed me.
Q. Who is T. J. Rider?
A. He was general manager at that time in Mexico.
Q. What about that signature?
A. That looks like the first one.
1484 Q. Now, take this sheet here, have you seen anything like that in your business up there, like that? (Hands witness paper attached to letter and envelope).
A. I don't remember of seeing anything of this kind.
Q. Got any company blanks with reference to competitive shipments, shipments by competitors?
A. In St. Louis?
Q. Yes.
A. Yes, sir, we may have some blanks.
Q. Well, you have some blanks?
A. Yes, sir.
Q. What about that signature? (Another letter).
A. That looks like the first one.
Q. And that?
A. And that the same.

Q. Now, read this,—the heading, "Waters Pierce Oil Company, incorporated under the laws of the State of Missouri, May 29, 1900."

Mr. ODELL: We would like to see the letter.

Q. "R. H. McNall, Commercial Agent", all of these letters have that on them, haven't they?

The COURT: Let counsel for the defendant see the paper.
(Mr. Batts hands paper to counsel for defendant).

Q. All these letters that you have noted have "Waters Pierce Oil Company, incorporated under the laws of the State of Missouri, May 30, 1900, R. H. McNall, Commercial Agent", on them, have they not?

Judge PENN: That statement of counsel as to the contents of these letters, the letters themselves are the best evidence of their contents?

Mr. BATTS: I am not undertaking to prove the contents of the letter.

1485 Judge PENN: We object to the witness being interrogated as to the contents of the letters.

Mr. BATTS: I am undertaking to establish these letters. The witness has been very guarded in his statements with regard to this signature and it seems to me that it is entirely competent to show that these letters have the letter heads and name of the commercial agent there, and that it has semblance, at all events, of genuineness, and I am undertaking to establish that fact by him; it isn't the contents of the letter.

Judge PENN: If those facts assist in identifying the letter, or show that they are admissible in evidence, it will appear upon the face of them when they are offered in evidence, and it is entirely unnecessary to question the witness in advance as to the contents of the letters.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Q. Now, the letters that reference has been made to, they have those letter-heads, have they, that I have just mentioned?

A. How is that?

Q. Well, I say these letters that you see here have the company's name, all that have been shown to you?

A. I think so.

Q. Just as all the letters that the company has received from its commercial agent at New York, that is the same character of stationery that all of those letters are written on?

A. So far as I know.

Q. So far as they have come under your observation?

A. So far as I know.

Q. (Hands witness another letter). Now, that is the same signature, isn't it?

1486 A. Looks like the first one.

Q. That also?

A. Same as the first, seems to be.

Q. And that?

A. That seems like the first.
Q. And that one?
A. That one seems to be the same.
Q. And that?
A. And that one.
Q. And that?
A. And that.
Q. Now, these letters are with regard to the same character of matters that Mr. McNall writes to you about, are they not? I will call off some of them. (Counsel reads) "Statement of bad debts for the first six months of 1902, Mexican bad debts——"

Mr. ODELL: Before the witness is interrogated about those letters, there are a great many of them and we have had no opportunity to examine them.

Mr. BATTS: If the counsel will admit their genuineness, why I have no further questions to ask upon it. If I have got to prove them up in this circumstantial way, I shall insist upon doing it.

Mr. ODELL: We insist that under the rule we are admitted to examine the letters or documents before the witness is interrogated about them, and I object to any interrogation about them for any purpose until we have an opportunity to examine them.

Mr. BATTS (hands all the letters to counsel for defendant): They are there for the examination of counsel.

Mr. ODELL: There are some forty or fifty of them, Your Honor.

Judge PENN: If the Court please, the examination of this witness with reference to these letters, as we understand, is being
1487 made for the purpose of undertaking to show by circumstances the authenticity of these letters for the purpose of introducing the letters.

Mr. BATTS: The purpose of the interrogation is to establish the genuineness of the letters, yes.

Judge PENN: We make the objection now, that this isn't the best evidence at the command of the State with reference to the genuineness of these letters, if they are genuine, and we ask the Court to retire the witness from the state, and permit us to put Mr. Lightfoot on the stand and show by him from whom he received these letters. We expect to show by Mr. Lightfoot that if these letters are genuine, they were received by him from one J. P. Gruet, and stolen by Gruet from the files of this company, and if they are genuine, that Gruet knows that fact; and that they have a contract with Gruet by which he has agreed to come here and testify whenever called upon by the State to do so, and having that evidence at their command it is the best evidence as to whether or not these letters were received in the ordinary course of mail by the Waters Pierce Oil Company, and having the best evidence it isn't competent for them to prove it by circumstantial evidence.

The COURT: The request will be denied.

Judge PENN: The defendant excepts to the ruling of the Court.

Mr. BATTS: Your Honor, I offer the documents in evidence under the proof already made. It is in connection with the established and admitted signature of R. H. McNall.

Judge PENN: Now, if the Court please, we object to the introduction of these letters in evidence, on the ground that their authenticity has not been sufficiently established; on the further ground that the fact of their having been received by the Waters Pierce Oil
1488 Company or by J. P. Gruet, as Secretary of the Waters Pierce Oil Company, has not been sufficiently established, and on the further ground that the evidence which has been introduced by the State with reference to the authenticity of these letters, or the fact that they were received by the Waters Pierce Oil Company or J. P. Gruet, is not the best evidence at the command of the State with reference to their authenticity, if they are authentic, or with reference to their having been received by the Waters Pierce Oil Company or by J. P. Gruet, if they were so received, and we here again offer to put Mr. Lightfoot on the stand and to prove by him that he received these papers from J. P. Gruet, and to show by him that he made a contract with J. P. Gruet, agreeing to give him one third of the county attorney's fee in this case, in consideration of his furnishing evidence in this case and coming here to testify when called upon to do so. We further offer to prove by Mr. Lightfoot that they have examined Mr. Gruet on two occasions by deposition and have not attempted to prove the authenticity of these letters, if they are authentic, by him, on either of those occasions.

The COURT: It is not incumbent on the party offering the letter to prove by one witness, rather than the other, the authenticity of the letter. The proof, so far, simply shows that the letters are written on stationery similar to the stationery that McNall used, and that the name resembled McNall's signature.

Mr. BATTS: There are established signatures of Mr. McNall already before the jury, and the witness testified that they are apparently the same.

Mr. ALLEN: And the question of law is that the jury themselves may compare the established signature with what we are offering, and let them pass on it and say whether it is the genuine signature.

The COURT: I don't understand that the witness has compared the signature with the letters which you offer in evidence
1489 with the admitted signature of McNall.

Mr. BATTS: The Court is mistaken about that. I did make that proof. I will do it over again if the Court desired.

Mr. ALLEN: We make the point further that the jury can do that themselves; it is a well established rule of law wherever you get an admitted signature in to the jury, then they can take other signatures and compare them themselves and say whether they are the same.

Judge PENN: If the Court please, in addition to the objections made, while we do not concede that the evidence is sufficient to establish the signature of McNall to these letters—but if it should be conceded that it is sufficient to establish his signature, it is in our judgment, certainly insufficient to establish the transmission of these purported letters to the Waters Pierce Oil Company or to J. P. Gruet, and the receipt of them. There is no evidence that they were ever mailed and no evidence that they were ever received, and the

point which I was after making is—and I think I made it clear—that we contend that the State cannot prove by circumstances the authenticity of these letters or their receipt, when they have better evidence at their command.

The COURT: The contention is overruled.

Judge PENN: We except to the ruling of the Court.

Mr. BATTS: If this is admissible on the proof that has been offered, I do not desire to use any more time to prove these up; if it is not, I shall——

The COURT: I am of the opinion that the evidence is sufficient to establish the—or to warrant the introduction of the letters, if that is desired, and further, that McNall wrote the letters, but whether they were ever received by the Waters Pierce Oil Company at St. Louis is another question.

Mr. BATTS: I shall offer proof on that, I think, later.

1490 Q. Now, Mr. Ackert, it is the habit, is it not, in your business there, that when a letter is received, to stamp the date of its receipt upon the letter?

A. Yes, sir.

Q. And for the signature or name of some of the officials of the concern to appear upon the stamp?

A. Yes, sir, the initials of the party who gets it, receives it.

Q. Has the name in some places?

A. It may have; I don't remember now of its having.

Q. Now, I will ask you Mr. Ackert, if letters—I will indicate the general subject-matter of these letters and ask you if they are not the character of letters received from your commercial agent at New York.

Judge PENN: We object to the counsel indicating in his questions the character of the letters, and if the Court thinks that it is permissible for him to prove the character, whether or not it is of the general character of letter received, that the proper plan is to hand the letter to the witness and let him examine it and state whether or not it is similar in character to letters which were received from McNall.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

Q. Now, a letter purporting to be written to A. M. Finlay, Esq., and signed by R. H. McNall, dated September 1, 1904, "Advance in billing prices of 72 and 73, 76 gravity gasoline,"—is that the same character of letters received from your commercial agent at New York?

A. It might have been.

Q. Well, I will ask you if the matter of advance in billing
1491 prices of gasoline isn't among the things you received letters from your commercial agent in New York?

A. We bought a great deal of gasoline and oil from the Standard Oil Company, and he probably was advising of the advance and decline.

Q. Will you answer the question I asked?

A. I never had received any letters from Mr. McNall; it is possible Mr. Finlay got a good many letters of that kind.

Q. I am not asking you about that; I am asking you if that isn't the character of letters received by the Waters Pierce Oil Company at St. Louis, from the commercial agent in New York, if that is one of the things that would be included in his correspondence and with reference to which he writes you?

A. It might be.

Q. It is, is it not?

A. It might be; I couldn't say because I have never gotten any letters from Mr. McNall.

Q. Well, I will ask you to look at this particular letter, (Hands letter to witness) and see if you recall anything about it.

A. Not anything about this letter at all.

Q. Now, on the bottom of that letter, is the signature—handwriting—of A. M. Finlay, is it not?

A. Yes, sir, looks like it.

Q. Well, it is, isn't it?

A. I think it is, yes, sir.

Q. What is the date of that letter?

A. September 1, 1900.

Q. What was the relation of Mr. Finlay to your company at that time?

A. He was vice president, I think. No, he was president.

Q. Now, will you explain that stamp there?

A. It was the date on which Mr. Finlay received it.

Q. It was the date upon which Mr. Finlay received it?

A. I assume so, yes, sir.

1492 Q. Now, that is the character of stamp that is put upon it when a letter is received at the Waters Pierce Oil Company's office, is it?

A. Yes, sir.

Q. This stamp here, what is that and what does that mean?

A. J. P. Gruet, it was read in the executive committee meeting, September 4, 1904.

Q. What does that mean?

A. It was read there.

Q. It was read in the executive committee?

A. Yes, sir, that is what it says.

Mr. BATTS: What is the date of that letter?

Mr. JOHNSON: September 1, 1904.

Q. Now, explain these notations down here. (Hands witness letter.)

A. Looks as though it was noted by a clerk in Mr. Adams' department; I don't know what the lower one is, I couldn't say.

Mr. BATTS: I am sorry to have to go so minutely into each one of these letters, but we have now—here is a letter with the signature of R. H. McNall, such as he accepted in his office as the signature of McNall, with two stamps upon it, such as would be put there, and the subject-matter is the—such as might be the subject of a letter, that it is the signature or writing of A. M. Finlay, has that upon it,

and he was vice president of the company, and notations by a clerk in Mr. Adams' office——

Q. Who was Mr. Adams?

A. I don't know whether he was secretary or treasurer at that time.

Mr. BATTS: Now, I will offer that particular letter.

Judge PENN: The defendant objects to its introduction for the reasons stated: that neither the signature of R. H. McNall has been sufficiently established, nor its transmission to the Waters
1493 Pierce Oil Company or to A. M. Finlay, or its receipt by A. M. Finlay or the Waters Pierce Oil Company; and for the additional reason that the evidence which has been introduced by the State to show these facts is not the best evidence at the command of the State of the facts, if the facts are as claimed, and we again offer to put Mr. Lightfoot on the stand and to prove by him that these letters were received by him from J. P. Gruet, who was at the time of their receipt Secretary and an officer of the company, and if they are genuine, and if they were received by the Waters Pierce Oil Company or Mr. Finlay, as president, that the fact of their receipt could be established by direct, instead of circumstantial evidence, which we understand to be the best evidence; and that the witness had no personal knowledge of the receipt of this letter and has never seen it before.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

Mr. BATTS: I hate to take up so much time on these; it is our purpose simply to indicate the general subject matter of these letters, the subject-matter as indicated on each one, as "advance in billing price of 72, 70, 76 gravity gasoline, and with permission of the Court, I will undertake before now introducing this particular one, to see if I cannot meet the demands of the law with regard to the entire batch, so I can simply, with permission of the Court and counsel, indicate the subject-matter instead of having to read all of these letters.

Q. Now, I will ask you to look at this, Mr. Ackert. (Hands witness letter.) What does it mean in this corner of this letter dated December 18, 1902?

A. Transmitted.

Judge PENN: We object to the witness being asked to state
1494 what a thing means; the genuineness of it hasn't been established.

Mr. BATTS (Handing letter to counsel for defendant): We have not been attempting to read it; I have simply passed it up to them.

Judge PENN: We submit that it isn't competent for him to be permitted to testify to the meaning of something the genuineness of which hasn't been proved.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts. (Mr. Stenographer. Let the record show that the objection was made to notation on this letter, "transmitted December 20, 1902, to J. A. S.", and the notation "Received December 20, 1902, answered 20, J. P. Gruet," and the red

ink notation at the bottom of this letter, "J. A. S. 12/20/02" for the purpose of saving time, it can all be considered objected to on the same ground and the same bill. Counsel, I presume, introduces it all?

Mr. BATTS: Yes, sir.

Q. Now, will you explain that, that stamp?

A. That seems to be a stamp used in Mr. Gruet's office, and I assume it is transmitted to a clerk in his office. I don't remember now who "J. A. S." is.

Q. "J. A. S." was the secretary of the executive committee, J. A. Stuart?

A. I think not.

Q. You think that Mr. Stuart was not secretary of the executive committee?

A. He was undoubtedly at that time the secretary, but this stamp down here shows that undoubtedly, or to my mind, that it was transmitted to a clerk in Mr. Gruet's office.

Q. That is Mr. Stuart, now the private secretary of Clay Arthur Pierce?

1495 A. Yes, sir.

Q. You know his signature?

A. That isn't his signature.

Q. Whose signature is it?

A. I can't say, but I am sure it is one of the clerks in Mr. Gruet's office.

Q. At this time, Mr. Gruet was secretary of the company?

A. Yes, sir, I think so.

Q. Now, the subject matter of this letter purported to be the cost of barreling and marketing, I will ask you if the cost of barreling and marketing is one of the things that your commercial agent in New York gave you instructions with reference to?

A. He never gave me any instructions at all.

Q. I am talking about the Waters Pierce Oil Company.

A. That was undoubtedly handled entirely in Mr. Gruet's department without reference to me or others.

Q. Well, I will put it in another way then: Is the matter of cost of barreling and marketing one of the subject matters upon which your commercial agent in New York communicates with the Waters Pierce Oil Company or some of its officials in St. Louis?

A. I did not know that it was.

Q. You don't know that it was.

A. I didn't know that it was.

Mr. BATTS: We offer this letter, it having been stated that that was—that "J. A. S." was a clerk in the office of the secretary who was Mr. J. P. Gruet, in connection with the testimony with regard to the signature of R. H. McNall.

Judge PENN: We renew the objections which we have made to the introduction of this other letter; I take it to be unnecessary to recite them.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

1496 Q. Now, your attention is called——

Judge PENN: In order to save any confusion, when a letter is offered in evidence, identified, we insist that it be read at that time without delay.

Mr. BATTS: It is all done, Your Honor, in an effort to save time. (Reads:) "Received September 3, 1904, Ans. —, President Waters Pierce Oil Co." "Read at executive committee meeting, September 8, 1904, J. P. G. Secretary", "Advance in billing prices of 72 and 73, 76 gravity gasoline." "A. M. Finlay, Esq., St. Louis, Mo. Dear Sir:" (Counsel reads letter.) Signed by R. H. McNall, dated September 1, 1904.

Mr. BATTS: (Reads another letter:) "Waters Pierce Oil Co., New York, N. Y." "Transmitted December 20, 1902, to J. A. S." December 18, 1902." "Cost of barreling and marketing." "J. P. Gruet, Secretary, St. Louis, Mo. Dear Sir:" (Reads letter) Written by R. H. McNall.

Q. Now, is this clerk Rundel you talked about here, the same one you sent up to New York as your commercial agent?

A. Yes, sir.

Judge PENN: If the Court please, we do not want to consume the time of the Court and jury unnecessarily by having the same procedure gone through with reference to fifty or sixty letters. We desire to claim, as we have with reference to the two letters introduced, that they are not admissible, and of course if this same procedure is gone on with, in order to preserve our rights, it will be necessary to make our objection, but if we have an adjournment now and counsel would give us an opportunity to examine these letters, we think we will probably—feel almost assured that we will be willing to concede that the same character of evidence has been introduced or might be considered that the same character of evi-
1497 dence has been introduced with reference to these two, and then let one general objection cover the whole matter; we think it would be a saving of probably an hour and a half or two hours' time, and we want time to go over these and confer with reference to them, but I feel satisfied that that will be the result.

The COURT: Well, we will adjourn until half past two o'clock.

Court re-convened at 2.30 p. m.

Direct examination of Mr. ACKERT continued.

(By Mr. BATTS:)

Judge PENN: If the Court please, with reference to these letters which have been offered by the State, for the purpose of saving time, we desire it to be considered as though the same character of testimony has been introduced with reference to each of these letters that was introduced this morning with reference to the two which Your Honor admitted in evidence.

The COURT: With reference to the endorsements and stamps on them?

Judge PENN: With reference to the endorsements and stamps

on them so far as they are applicable; some of them haven't the same stamp on them; some have others of similar character and some have not; one some of them these endorsements are omitted. And we make the same objections to all of these letters which we made this morning to the two that were introduced in evidence, to-wit, that it isn't the best evidence at the hands of the State of the writing of these letters or of the receipt by the Waters Pierce Oil Company or the different officers to whom they are addressed, and we make this objection specifically with reference to the letters addressed to J. P. Gruet, who, as appears from the testimony in this case, was an officer of this company, secretary, and we sub-
1498 mit that the testimony of the witness J. P. Gruet is the best evidence as to whether these letters were received by him, and we again renew our offer to put Mr. Lightfoot on the stand and prove that the State has a contract with the witness J. P. Gruet by which they could have him here if they saw fit to do so.

The COURT: The objection will be overruled.

Judge PENN: You decline to allow us to put Mr. Lightfoot on the stand?

The COURT: Yes, sir.

Judge PENN: The defendant excepts to both rulings of the Court.

Mr. BATTS: Now, with permission of the counsel and Court, instead of reading these letters, I will read the subject matter as indicated by the letter itself, where it does so.

Judge PENN: That is all right.

Mr. BATTS (to the Jury): Gentlemen, each of these letters is signed by R. H. McNall, written upon letter heads——

Judge PENN: We understood he is offering nothing but the letters and the endorsements on them. There are some of them that other papers are attached to, and there has been no effort to introduce those other papers in evidence.

The COURT: The other papers and the letters have not been offered in evidence.

Mr. BATTS: No, sir, I have not yet read them. The letter heads are: "Waters Pierce Oil Company, Incorporated under the laws of the State of Missouri, May 29, 1900. New York, N. Y., R. H. McNall, Commercial Agent," and all that I see right now are addressed to J. P. Gruet, Esquire, Secretary Waters Pierce Oil Company, St. Louis, Mo., and where anything else is indicated I shall call attention to that. (Counsel either reads entire letter or subject matter.)
1499 The subject matter of this is, "Returning of cargo of steamship Pennant," dated August 27, 1902.

Letter of February 18, 1903, subject matter is not indicated here, "Will you kindly send me a report covering your annual sales at your station," etc.

Letter of July 9, 1902, subject matter as indicated by the letter itself is changing from Walter Jennings, Agent, to R. P. Tinsley, Agent.

Letter dated September 16, 1904, cost and selling price sheet.

Letter of April 6, 1903, shipment of refined oil from San Francisco to Mexican ports.

Letter dated September 19, 1904, "I beg to advise that on all orders received after this date the price made on linseed oil shall be as follows," etc.

Letter of December 7, 1903, "I beg to give below memo. of the average cost of barreling and marketing oil at stations in your various divisions during the first six months of 1903," etc.

Letter of January 6, 1905, "On all orders received after this date the price on linseed oil will be as follows," giving the prices.

Letter of January 30, 1903, subject, returning debit memorandum.

Letter of December 24, 1902, "I beg to hand you herewith blank for reporting prices upon company supplies during the month of December."

Letter of March 31, 1903, "For some time past we have not received from you clearances of Texas fuel oil from Sabine Pass and Port Arthur," etc.

Letter of February 11, 1903, seems to be the one I read to the jury this morning.

Second letter, December 19, 1902, "I would like to have
1500 you make me up a statement showing the number of employees of the W. P. O. Co., and the annual amount of wages paid same for one year," etc.

Letter, November 25, 1902, "I beg herewith to hand you blank report on which I shall be glad to have you specify prices upon company supplies for the month of October not already rendered."

Letter of January 28, 1902, subject matter, "report of prices upon company supplies."

Letter of January 2, 1905, "On all orders received after December 29th, the price on linseed oil shall be six and three fourths cents per gallon," etc.

Letter of December 22, 1902, "I beg to return herewith stable inventories of your various divisions," etc.

Letter of June 28, 1902, reports 41-d and 41-e, Mexico refineries.

Letter of September 17, 1903, refinery statements.

Letter of November 28, 1902, "I am in receipt of your favor of 24th inst., and am to-day in receipt of express package containing reports," etc.

Letter of January 7, 1902, "I beg to advise that the cost of milk cans used for milk can delivery should be charged to B. & M. expense."

Letter of February 18, 1902, "Will you please have made up and send me a statement giving the names of the different banks where you have an account," etc.

Letter of February 6, 1902, "Will you please let me know if you have recently re d a letter from C. E. Bedford," etc.

Letter of March 18, 1902, "For some unknown reason, on December 28, 1895, instructions were given to charge iron barrel depreciation of four cents per barrel to P. & L. accounts," etc.

1501 Letter of January 15, 1902, "Replying to your favor of 11th, on the above subject, cost of milk cans, I think your manner or having these milk cans numbered," etc.

Letter of December 5, 1902, the subject matter is, "Excess tank wagon equipment at City of Mexico."

Letter of May 11, 1903, "In your telegram of May 8th, giving total sales of refined oil and naphtha for the month of April, I notice that you have included in the naphtha sales 20 barrels of engine naphtha," etc.

Letter of May 6, 1903, "Replying to your favor of 4th inst., beg to hand you herewith copies of cyclopædia reports relative to E. M. Wilhoyt," etc.

Letter of May 7, 1903, "I am in receipt of your favor of 4th inst., enclosing cyclopædia reports of various points."

Letter of March 13, 1903, subject matter of the letter is marine insurance.

Letter without date, "Referring to the wording of your letter of March 19th, I beg to say that I would suggest," etc.

Letter of September 6, 1902, "I have not received from you for some time current reports of fuel oil shipped from Beaumont," etc.

Letter of July 23, 1902, "Referring to report from 30-*d*, deliveries of refined oil and naphtha," etc.

Letter of September 18, 1902, "I should be glad to have as soon as possible W. P. O. Co.'s statement showing net results of marine oil business." (All of letter.)

Letter of February 24, 1903, "I am in receipt of report from form 23-*d*, receipts and purchase for month of January," etc.

Letter of July 18, 1902, statement of bad debts for the first six months of 1902.

Letter of August 7, 1902, bad debts in East Texas and Louisiana and North Texas Division.

1502 Letter of January 27, 1902, bad debts for the year 1901.

Letter of September 16, 1902, "I have not received from you for some time reports showing tank car shipments," etc.

Letter of November 12, 1902, "I have not received any report from you since September 1, of shipments of Beaumont oil," etc.

Letter of August 22, 1902, "I am in receipt of your favor of the 20th inst., in regard to bad debts charged off during the month of June," etc.

Q. Mr. Ackert, what arrangements did you have for ascertaining who shipped oil to and from—who shipped oil outside of your own company, from Beaumont and from Port Arthur and Sabine Pass?

A. Same kind——

Judge PENN: We object to that as irrelevant and immaterial.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

A. Same kind of information we have now, from agents and salesmen, keep posted on what is going on.

Q. Well, you have some special payments that you make for the purpose of getting that information, have you not?

A. No, sir.

Q. You have discontinued that business?

A. I don't know of any.

Q. Didn't you have through Mr. Tolliver, at Houston, several employees for the purpose of obtaining information of that kind?

A. Not that I know of, sir.
Q. You know the signature of Mr. Tolliver?
A. Yes, sir, I think so.
Q. Was this letter received during your incumbency as general manager? (Hands witness letter.)
A. No, sir, it was not. I have never seen the letter before.
1503 Q. And the matter referred to there, you don't know about?
A. No, sir.
Q. Don't you know about the special arrangement for securing information at those points. (Hands witness letter) I will ask you to state whether or not that is Mr. Tolliver's signature?
A. It looks like it.
Q. Was that received while you were general manager?
A. No, sir.
Q. There was a Southwestern Oil Company doing business in St. Louis, Mr. Ackert, was there not?
A. Yes, sir.
Q. Purchased by the Waters Pierce Oil Company?
A. It was.
Q. It was in competitive business there?
A. Yes, sir.
Q. When was it purchased?
A. I think it was two years ago, or about two years ago.
Q. Have you, since you became manager, purchased any other competing plant?
A. I don't remember of any.
Q. Well, I will ask you to think about it and tell us.
A. I don't remember of any.
Q. The Southwestern was run there in its own name after you acquired it?
A. I think it was closed out immediately.
Q. Well, did your company organize the International Oil Works?
A. That was before my time.
Q. It is still operating, isn't it?
A. The International?
Q. Yes.
A. Yes, sir.
1504 Q. Belongs to the Waters Pierce Oil Company, doesn't it?
A. Yes, sir.
Q. Operating as in competition with the Waters Pierce Oil Company, is it not?
A. No, sir, I can't say that. I think it is known by the people of St. Louis who owns it.

Mr. ODELL: We object to testimony with reference to the International Oil Company, for the reason that it is irrelevant and immaterial to any issue in this case; it is not operating in the State of Texas.
The COURT: The objection is overruled.
Mr. ODELL: The defendant excepts.

Q. Well, that has been operated ever since you have been with the company, has it not?

A. Yes, sir.

Q. Operated as an independent plant?

A. Ever since I have been with the company in St. Louis.

Q. Yes.

A. Yes, sir.

Q. And is still being operated as an independent concern?

A. It is operated as the International Oil Works; it is known, however, by the people of St. Louis that it is owned by the Waters Pierce Oil Company.

Q. Well, why is it operated that way, then?

A. Simply operated, that is all.

Q. Now, why do you maintain two plants, when one would do the business, if everybody knew about it, the ownership of the International Oil Works?

A. I can't say; I couldn't answer that question.

Q. When did it become known that it belonged to the Waters Pierce Oil Company?

1505 A. I can't say just when; it has been known generally for several years.

Q. Generally known?

A. Yes, sir, that is my understanding.

Q. Published in the papers?

A. It has been in the papers quite frequently.

Q. A statement by the Waters Pierce Oil Company?

A. No, sir.

Q. Considered as an independent concern, is it a paying proposition?

A. I think so.

Q. You don't know about that?

A. I couldn't say for sure.

Q. You maintain separate offices and separate tanks?

A. All the reports come to our office every day; all the cash reports come to our office.

Q. Well, did you maintain a separate organization for the International Oil Works?

A. Only so far as the tank wagons and the manager of it.

Q. You have some tank wagons with the name "International Oil Works" on them; is there any difference, any better or any worse than the Waters Pierce tank wagons?

A. About the same.

Q. Well, now, will you tell me why this is maintained?

A. I couldn't explain that; that is a part that I don't have anything to do with.

Q. Now, while you were maintaining concerns in Texas, that were separate—belonged to the Waters Pierce Oil Company, but operated separately——

A. It was known to be the Waters Pierce Oil Company.

Q. You supplied them with oil from the International Oil Works, did you not?

1506 A. That was before my time, I couldn't say.

Q. Well, you kept the Eagle Refining Company going up to about what time?

A. 1903, I think, some time,—November, 1903, I think, about that time.

Q. Well, did you supply it with oil from the International Oil Works?

A. Not to my knowledge.

Q. Where did you supply that from?

A. I couldn't say; I didn't handle the orders.

Q. Now, you were right familiar with the situation in regard to the Eagle Refining Company, were you not?

A. I knew about it.

Q. And you discontinued it, did you not?

A. I arranged for its discontinuance.

Q. Why?

A. Well, I thought that our agency at Dallas could take care of it; Mr. Cahoon was in charge of the division; I thought he could take care of the business.

Q. When did he get in condition to take care of the business?

A. About a year before.

Q. Couldn't take care of it prior to that time?

A. He might have, yes.

Q. Why wasn't it discontinued?

A. Just because it wasn't. It got to a point where we made up our mind to do away with it.

Q. Now, you looked after these points, all the points in your division, and were very careful to figure out to a cent the cost of even a barrel and if it gets over on the Pacific coast or anywhere

1507 else, you keep correspondence in reference to it and you knew, did you not, the very moment that the Eagle Refining Company at Dallas, got to a point where it didn't pay, di- you not?

A. I think it was paying when it was closed out, as I remember.

Q. It was paying then?

A. Yes, sir.

Q. But the business could have been handled by the other concern?

A. It could have been.

Q. And you don't know of any reason why it was not closed out as soon as it was bought, do you?

A. Only as far as Mr. Clem's services were not altogether satisfactory and we decided to do away with it.

Q. Then it was on account of Mr. Clem that you discontinued this Eagle Refining business?

A. I think that was a part of it.

Q. That was it?

A. Yes, sir.

Q. What did you accomplish or hope to accomplish by the maintenance of the Eagle Refining Company's business there, separate and distinct from the regular station and business of the Waters Pierce Oil Company?

A. I understand arrangements were made long before I had anything to do with it, and I couldn't say.

Q. I know, but why did you keep it up?

A. I can't tell you that.

Q. You can't give any reason for keeping it up?

A. It was shortly after I was put in there in that capacity that I had it discontinued.

Q. I will ask you if that wasn't continued as long as it was in effect for the purpose of reaching what is known as the "dissatisfied trade"?

A. No, sir, I don't think so, because it was known in Dal-
1508 las that it was owned by the Waters Pierce Oil Company.

Q. You are speaking now with the knowledge of the facts?

A. I understand that it was known generally.

Q. What do you predicate that on?

A. It was advertised in the papers in '95, '94.

Q. What was advertised?

A. It was known in the papers, it was given out at the time of the trial, in '95, I think in Waco; it was known.

Q. Now, I will ask you if that concern was furnished oil in the name of or through the International Oil Works?

A. I couldn't tell you; I didn't handle any of the orders.

Q. Now, with reference to the Roy Campbell business, was it through the International Oil Works?

A. I couldn't say.

Q. Was it impossible to get another manager besides Mr. Clem up there?

A. I don't know that it was.

Q. You were not so dissatisfied with the services of Mr. Clem that you didn't still give him a place with the company?

A. He was given a place.

Q. Have you not now at this time in the State of Texas any concern that you run in the same way you ran the Eagle Refining Company?

A. No, sir.

Q. Have you any kind of business in the State of Texas that belongs to the Waters Pierce Oil Company that isn't operated under the name of the Waters Pierce Oil Company?

A. No, sir, not that I know of.

Q. No oil business at all?

A. No, sir.

Q. Now, I will ask you if you are in a position to know
1509 with reference to those things?

A. I think I would know if there was any such arrangement.

Q. All the business is communicated to you, of the Waters Pierce Oil Company?

A. Yes, sir. All of it?

Q. Yes.

A. Not all of it, no, sir.

Q. Well, by reason of your being an officer there and being on

the executive committee and coming in contact with those parties every day, you really know all of the transactions of the company, don't you?

A. No, sir, I don't know all of them.

Q. Now, they don't undertake to keep anything concealed from you, do they?

A. I have not heard of it, but I am away quite a little.

Q. The general course and policy of the business you, of course, must know certainly?

A. I know, generally, yes, sir.

Q. Now, you know how they get oil?

A. In what way?

Q. What arrangement they have got for getting oil?

A. For buying it?

Q. Yes, sir.

A. The most of our supplies are bought from one place.

Q. Who?

A. The S. O. People.

Q. What does that mean?

A. The Standard Oil Company, most of it.

Q. You make a contract every year for your oil?

A. No, sir.

Q. When was your contract made?

1510 A. I don't know of any contract; never heard of any.

Q. Never heard of a contract for oil?

A. No, sir.

Q. Well, how did you get it then?

A. It is bought, or purchased.

Q. Negotiate for every specific lot of oil?

A. No, sir.

Q. Don t negotiate for it?

A. We do not; there is a price for the various grades of oils, and we buy what we need.

Q. They fix the price then, absolutely?

A. Just the same as the Gulf Refining Company, or the Texas——

Q. I am not asking you that; I asked you if they fixed the price?

A. They have a price.

Q. Not a matter of negotiation between you at all?

A. No, sir. They have a price just the same as anybody else.

Q. And the- notify you as to what that price is?

A. If they change it, advance it or reduce it, we are advised.

Q. You are advised?

A. Yes, sir.

Q. You don't undertake to get any refined oil from anybody else at all?

A. Yes, sir, we bought from the Gulf Refining Company and the Texas Company.

Q. You have bought from them?

A. Yes, sir.

Q. Did the Standard Oil Company buy from them?

A. No, sir, the Waters Pierce Oil Company.

Q. Now, do you get a notice from them as to their price?

A. We assume they have a price before we buy.

1511 Q. And you assume the Standard Oil Company has a price before you buy?

A. We have a price from them and we assume that that price is good until we are advised of another price.

Q. Now, when you get another price from them, we will say a raise, you immediately, do you not, raise your own prices as far as possible?

A. Not always.

Q. Well, isn't that the ordinary course of business?

A. It is generally.

Q. Now, when they notify you the price has been raised, that is a matter that goes to the executive committee?

A. It is always considered.

Q. Always considered by them?

A. Yes, sir.

Q. And then you adjust your prices to the prices fixed by the Standard Oil Company, is that true?

A. No, sir.

Q. How do you fix it?

A. The local conditions in the territory may have something to do, always has something to do.

Q. That is to say, competition?

A. Yes, sir, and conditions.

Q. Competition, I say, has something to do with it always?

A. Naturally.

Q. And the price which the Standard Oil Company changes you is the other—considerable element?

A. It is the price we pay for our goods, is the basis on which the selling price is made.

Q. The price the Standard Oil Company charges you is the basis on which you make your price?

1512 A. From them or any one else.

Q. Well, you get the most of your oil from them, did you not?

A. Yes, sir.

Q. You say you bought oil from the Gulf Refining Company. Have you bought any refined oil from them?

A. I think so; I have forgotten now; I couldn't say, really.

Q. Well, when did you buy it?

A. I couldn't tell you.

Q. Well, can you tell me that you did buy it?

A. Yes, sir.

Q. What have you in mind to base that on? When was it and the amount of it?

A. I couldn't tell you just when or how much.

Q. Or the price?

A. I got twenty tank cars of gasoline only a short time ago.

Q. I am not asking you about the gasoline.

A. I couldn't say just exactly when.

Q. You have bought refined oil from them?
A. As I remember, we have.
Q. What did you do with it?
A. Sold the same as any other oil?
Q. Well, where?
A. In Texas, I assume.
Q. Well, now is this a matter of assumption with you, or do you know you bought oil from the Gulf——
A. As I remember, we have bought oil from the Gulf Refining Company, but I know we bought a great deal of gasoline.
Q. But I am talking about refined oil.
A. I couldn't say definitely, but I am of the impression that we have bought oil.
1513 Q. Well, now, so far as the Security is concerned, you haven't bought any oil from them, have you?
A. Yes, sir, buying it every day.
Q. You bought that from the Standard Oil Company,—do you not, what you get from the Security Company?
A. All of our quotations are made to them direct.
Q. From whom?
A. From the Security Company, from them direct; we know nothing except the Security Company.
Q. But you pay the Standard Oil Company, though?
A. I couldn't say; I don't have anything to do with the paying of it. I assume the Security is paid direct; I couldn't say.
Q. Now, I will ask you if this is the course of business, that you get a card or letter from the Standard Oil Company, in which they quote a certain price to you at Corsicana and at Neodesha, and that your orders are predicated upon that, your requisitions?
A. Our orders are placed at the most economical point of supply, considering the quality of the goods.
Q. But you haven't answered my question; you get that from the Standard Oil Company?
A. We have our quotations from the Standard Oil Company.
Q. With reference to the Corsicana and the Whiting, Indiana, refineries, and the Neodesha?
A. We get them direct from the Corsicana refinery, from the Neodesha refinery, as I understand, from the Sugar Creek refinery, Whiting, etc.
Q. Now, isn't the ordinary course of business for you to receive a letter like this from the Standard Oil Company: (Reading) "Effective August 15th, our prices on refined oil f. o. b. Whiting and Corsicana will be as follows: Common oil, Corsicana 4¼¢; Whiting 4-3/8¢; Water White 110 to 120, 4⅞¢; Eupion 6⅛¢; Water
1514 White 4⅞¢; Eupion 120 to 150, 6¼¢",—isn't that the ordinary course of business with reference to the purchase of oil?
A. It may have been.
Q. Well, if you know, I want you to say so.
A. I can't say, I haven't seen the letter.
Q. I am asking you about the ordinary course of business?
A. Probably they did come in that way.

Q. And upon those prices thus paid the Standard Oil Company you make your requisitions direct upon the refinery?

A. At that time I can't say how they were placed; all I know is at the present time.

Q. Well, this is August 15, 1906, have you changed since the suits were instituted against the company?

A. I couldn't say we had; all I know is the way the orders are placed now.

Q. Your recollection don't go back as far as August 15, 1906?

A. No it doesn't, I couldn't say.

Q. Now, I will ask you, Mr. Ackert, what the course of business is when an order is received by the company for oil from a person outside of the Waters Pierce Company territory and in the Standard Oil territory?

A. There isn't anything done with it?

Q. Sir?

A. There isn't anything done with it.

Q. Don't do anything at all with it?

A. No, sir.

Q. Don't reply to the letter?

A. Sometimes we do.

Q. You don't do anything with that at all?

A. I didn't understand your other question; I beg your pardon——

Q. Now, take the dividing line between the Standard Oil
1515 Company and the Waters Pierce Oil Company, when you get an order from a merchant or any person over on the Standard Oil Company's territory, what do you do with it, with that order?

A. You mean what——

Q. What does the Waters Pierce Oil Company do with it?

A. I don't understand the first question; I would like to have the first question changed; we always quote them.

Q. You always quote them?

A. Quote them the price, our regular selling price; if it is St. Louis, it is quoted f. o. b. there.

Q. If it is inside your territory, you don't quote f. o. b. St. Louis, do you?

A. Yes, sir, the same way.

Q. Now, how long have you been pursuing that policy with regard to such orders?

A. It has been done right along, as far as I know.

Q. About how long?

A. I couldn't say how long.

Q. Well, something less than a year?

A. I couldn't say, I am sure.

Q. Well, what was the course of Business before the suits were instituted?

A. I have forgotten now just exactly how they were handled; I assume in the same way.

Q. You assume in the same way?

A. Yes, sir, my understanding; I am not sure about it.

Q. Now, I will refer you, Mr. Ackert, to your statement taken in the case of the State of Missouri *vs.* Standard Oil Company, *et al.*, Waters Pierce Oil Company,—didn't you state in that, that prior to that time that these orders were turned over to the Standard Oil Company?

1516 A. Not that I remember.

Q. You don't remember having so stated?

A. No, sir; I don't.

Q. And you stated that——

Judge PENN: We make two objections to this: first, that this is the State's own witness,—it is incompetent for him to attempt to impeach him in this way; and, second, that what this witness may have testified to in another case in the State of Missouri is hearsay and not admissable as against this defendant. And then we make the third objection, if these should not be sustained by the Court, that the witness is entitled to have the questions which he is supposed to have been asked, stated to him and the answers which he is supposed to have given, stated to him, without asking him to state whether or not he made the statements such as counsel seems to conceive was the substance of his prior statement.

The COURT: The objection is overruled. If counsel for the State desire to introduce what they say was another statement of this witness, they will have to ask him if he made that identical statement before they can introduce it, but for the purpose of this examination they need not show it to him.

Judge PENN: The defendant excepts.

Q. Now, I will ask you, Mr. Ackert, if the course of business prior to that time was not for you to send the order to the Standard Oil Company, and didn't you get like courtesies from the Standard Oil Company, with regard to orders received by them?

A. I don't remember of any such thing.

Q. You don't remember anything of that kind?

A. No, sir.

Q. Was there any change at all about a year ago with reference to the handling of that matter?

A. Not that I remember.

1517 Q. Mr. Ackert, I notice among the letters introduced, a reference to "encyclopedia reports" relative to E. M. Wilhoyt, Joplin and Springfield, Missouri; what do you mean by "encyclopaedia reports"?

A. I am sure I don't know; I never heard of that before.

Q. Who is E. M. Wilhoyt?

A. Man in the oil business at Springfield, Missouri.

Q. One of your competitors?

A. Yes, sir.

Q. And Dubbs & Ruddles?

A. They were competitors at Belleville, Illinois.

Q. Are they competitors now?

A. Yes, sir.

Q. Actual competitors, now belonging to the Waters Pierce Oil Company?

A. Actual competitors.

Q. You had some little controversy, did you not, with reference to whether or not the Belleville, Illinois, territory belonged to you or the Standard Oil Company?

A. I don't know of any controversy; we have always continued our agency there; supplied the trade.

Q. They insisted that that belonged to them, did they not?

A. Not that I know of.

Q. Didn't you have some kind of a controversy with Mr. Von —— with regard to that?

A. No, sir, not that I remember of.

Q. He insisted that was in his territory.

A. No, sir.

Q. Well, in East St. Louis?

A. No, sir, the Waters Pierce Oil Company have always operated in East St. Louis.

1518 Q. Well, some point there across the river, didn't you have a controversy with him or somebody with reference to whether that was Standard Oil or your territory?

A. Not that I remember of now.

Q. With reference to which you testified in that case?

A. There was some territory above there that was in controversy; didn't amount to anything, but it wasn't Belleville or East St. Louis.

Q. Where was that?

A. I can't say.

Q. Then there was a controversy as to which one owned that territory?

A. We were supplying it; we were sending our wagons and they claimed that it was——

Q. And they claimed it was their territory?

A. And we have simply continued to do it.

Q. You haven't recognized their claim to that?

A. No, sir.

Q. You know anything about the capacity of the refineries in Texas?

A. No, sir, I do not.

Q. Are you familiar with the signature of Mr. Pierce?

A. Yes, sir.

Q. (Hands witness paper.) I will ask you to state whether or not that is Mr. Pierce's signature?

A. Yes, sir, it looks like it.

Mr. BATTS: Identified as voucher dated June 30, 1900.

Q. I will ask you about voucher dated June 15, 1900, you know whose signature this is?

A. Mr. A. M. Finlay's; looks like it.

Q. You recognize that signature? (Indicating on paper.)

A. Yes, sir.

1519 Q. Whose is that?

A. J. D. Johnson's; looks like it.

Q. Do you know whose signature this is?

A. Mr. Naudain's.

Q. Do you know anything about the books and vouchers, etc., of the Waters Pierce Oil Company being audited by the Standard Oil auditors?

A. No, sir.

Q. Don't know anything about that?

A. I simply know there were auditors there; I have understood that they were in the employ of the Waters Pierce Oil Company.

Q. That there were auditors there?

A. Yes, sir.

Q. Do you know Mr. H. H. Stein?

A. No, sir.

Q. Have you ever known him?

A. Don't remember ever having met him.

Q. You know whose hand-writing this is? (Indicating on voucher.)

A. No, sir, I do not.

Q. Have you any knowledge at all of the method of keeping books by the Waters Pierce Oil Company?

A. No, sir, I haven't it is out of my department.

Q. Do you know whose handwriting this is? (Hands witness paper.)

A. No, sir, I do not.

Mr. BATTS (handing paper to counsel for defendant): We offer it in evidence.

Judge PENN: You offer both of these in evidence?

Mr. BATTS: Yes, sir.

Q. Who pays the salaries of the auditors?

A. The accounting department.

Q. The auditors sent to St. Louis?

A. I suppose it is the same as all of the others.

1520 Q. Paid in St. Louis?

A. The treasurer, Mr. C. M. Adams, pays all the salaries.

Q. The auditors that came from New York to audit the books of the Waters Pierce Oil Company are paid by the Waters Pierce Oil Company?

A. Mr. Adams pays all of the salaries; further than that I know nothing.

Q. Well, you don't know by whom these auditors are paid?

A. No, sir, I do not.

Judge PENN: With reference to the voucher dated June 30, 1900, which is offered in evidence by the State, we object to it as irrelevant and immaterial to any issue in this case; only tendency it could possibly have would be to prejudice the jury against the defendant.

Mr. BATTS: I may be able to secure an agreement with counsel to obviate the necessity of putting this in, if he thinks it will prejudice the Jury; I have no desire to do that.

Mr. BATTS (after conference with defendant's attorneys): We have an agreement to the effect that there were auditors of the Standard Oil Company sent to St. Louis to audit the books of the Waters Pierce Oil Company; the first of the audits made by them is sometime in the year 1901; I take it that counsel will not hesitate to make

an agreement to the effect that audits were made by the Standard Oil Company as early as June 15, 1900. And further, that payments authorized by Mr. Pierce as early as that, were audited by the Standard Oil Company. If these agreements are made, the vouchers will be withdrawn.

Judge PENN: If the Court please, in addition to the objection which was made to this alleged voucher, dated June 30, 1900, we understand counsel for the State to say that their sole purpose in——

Mr. BATTS: I have not made any statement of the sole pur-
1521 pose; I made a statement to you as to what I would keep the vouchers out, if you would agree to; if the vouchers are to go in for any purpose, they are to go in for every purpose for which they are admissible.

Judge PENN: We desire to make the objection which has been made,—irrelevant and immaterial to any issue in this case, and that the audit stamp on the back hasn't been identified or proven up.

Mr. BATTS (after conference with counsel): The vouchers are withdrawn, and the following agreement is made: It is agreed that the expenditures made as early as June 15, 1900, and authorized by H. C. Pierce were thereafter audited by the auditors of the Standard Oil Company.

The COURT: Read that again. (Counsel having written it out in pencil on a scratch tablet.)

Mr. BATTS: It is agreed that expenditures made as early as June 15, 1900, and authorized by H. C. Pierce, were thereafter audited by auditors of the Standard Oil Company.

Mr. BATTS: Of course, this is expenditures of the Waters Pierce Oil Company?

Judge PENN: Certainly.

Mr. BATTS: Can I put that in,—"of the Waters Pierce Oil Company"?

Judge PENN: Yes, sir. (Counsel writes the words in the agreement.-

Q. Just one question, Mr. Ackert: I call your attention to a document dated February 8, 1901, being a letter from Wade Hampton; I wish you would explain, if you can, what this stamp which is included in it, means.

A. Transmitted to Mr. A. M. Finlay, vice president, Mr.
1522 H. C. Pierce, president, I suppose a copy of it is what it means, to be transmitted.

Q. You were at the home office in February, 1900, were you not?

A. I think so, yes, sir; I couldn't say definitely, though.

Q. You recall the occasion of Mr. Pierce sending out a letter to the subordinates to the effect that his health had become impaired so he would have to resign from the business management of the Waters Pierce Oil Company?

A. I think there was such a letter.

Q. That was about February, 1907?

A. I couldn't say just the date.

Q. Well, was it about that time? A few months before the re-incorporation?

A. I think there was such a letter as that, but I have not thought about it since then, and I couldn't say as to the date.

Q. Mr. Pierce went in as president upon the re-incorporation of the concern, didn't he?

A. I think so, yes sir.

Q. At the time of the re-incorporation, Mr. Andrew Finlay was president?

A. As I remember, he was.

Q. Just had been in only a few months?

A. I think so.

Q. After the re-incorporation, how many members of the Board of Directors were there as representatives of the Standard Oil Company?

A. After the re-incorporation?

Q. After the re-incorporation.

A. I don't know that there were any.

Q. Well, you didn't know then the representations that the members of the Board had with regard to the different interests involved?

A. No, sir, I did not.

1523 Cross-examination:

Judge PENN: If the Court please, Mr. Johnson is more familiar with the facts in reference to the testimony of this witness, and we ask permission that he be allowed to cross-examine him.

THE COURT: All, right, sir.

(Examination by Mr. Johnson:)

Q. When did you say you first became connected with the Waters Pierce Oil Company?

A. In March, 1883.

Q. In what capacity?

A. As agent at Fort Smith, Arkansas.

Q. How long did you remain in that position?

A. I think it was five years, about, as I remember.

Q. To what position were you transferred at the end of the five years?

A. To the position of traveling salesman in Arkansas.

Q. Connected with the Arkansas division?

A. Yes, sir, under the office at Little Rock, where I staid for six months.

Q. Then to what position were you transferred?

A. To a position in St. Louis.

Q. With the home office?

A. With the home office, for six months.

Q. What particular position did you occupy then, and what were your duties?

A. I was on the street as salesman.

Q. City salesman?

A. One of them.

Q. How long?

A. For six months, about.
1524 Q. Then what position did you assume?
A. I was transferred to the East Texas & Louisiana division at Marshall, as assistant manager, Marshall, Texas.
Q. Who were you under there?
A. Under F. M. Austin.
Q. How long did you remain there in that position?
A. A year and a half.
Q. Then to what position were you transferred?
A. As manager of the Arkansas division, where I remained for two years and a half.
Q. Headquarters at Little Rock?
A. Yes, sir.
Q. Then where were you transferred?
A. To St. Louis, as assistant in the lubricating department.
Q. When was that, Mr. Ackert?
A. In '93, June '93, I think.
Q. Who was the head of the lubricating department?
A. June '94, Mr. Stephen Johnson.
Q. How long did you occupy that position?
A. For five years.
Q. Then what duties did you assume?
A. I was with Mr. Gruet, in the accounting department, for a few months, just doing one thing and another; then I was transferred to Mr. A. M. Finlay's office.
Q. Mr. Andrew Finlay?
A. Yes, sir.
Q. What was his position at that time?
A. He was vice president.
Q. And general manager, wasn't he?
A. Yes, sir; vice president and general manager.
Q. You were made the assistant then to the general man-
1525 ager?
A. I was general manager for a short time and then I was——
Q. I say you were made assistant to Mr. Finlay, the general manager?
A. Yes, sir.
Q. How long did you perform the duties of that position?
A. Until June or the 1st of July, 1903.
Q. I don't recollect, did you state when you assumed the duties of assistant to Mr. Finlay?
A. As I remember, it was 1900; I have just forgotten the date.
Q. Was it before or after the dissolution of the old company and the organization of the new company?
A. Just before, as I remember.
Q. And you performed those duties as assistant to the general manager; Mr. Finlay was vice president of the new company?
A. Yes, sir.
Q. And continued as general manager of the new company from the time of its organization?

A. Yes, sir.
Q. Until 1903, when you were made general manager?
A. Yes, sir.
Q. Then you assumed all the duties of general manager?
A. Yes, sir.
Q. These different positions that you have occupied with the company, has given you a pretty thorough knowledge of its general plant and operation?
A. Yes, sir.
Q. And mode of transaction of business?
A. Yes, sir.
Q. And employees?
A. Yes, sir.
Q. Nature of the equipment?
A. Yes, sir.
1526 Q. Hasn't it?
A. Yes, sir.
Q. First, are you any relation to Mr. H. C. Pierce?
A. I am.
Q. What?
A. Cousin.
Q. First cousin?
A. Yes, sir.
Q. Have a brother, Cyrus L. Ackert?
A. Yes, sir.
Q. What position does he occupy?
A. Manager of the Missouri division.
Q. How long has he been connected with the company?
A. Sixteen years, I think.
Q. Mr. Stephen Johnson, you say, was at the head of the lubricating department for years?
A. Yes, sir.
Q. What relation is he to Mr. Pierce?
A. He is a brother-in-law.
Q. That is, his wife is Mr. H. C. Pierce's sister?
A. Yes, sir.
Q. Mr. Andrew M. Finlay, has been connected with the company longer than you have?
A. Yes, sir.
Q. In different responsible positions; what position—what relation is he to Mr. Pierce?
A. He is also a brother-in-law.
Q. He and Mrs. Pierce were brother and sister?
A. Yes, sir.
Q. And all the parties have been connected with the company since you first became connected yourself?
1527 A. Yes, sir; twenty-three years ago last March.
Q. Now, what are your particular duties; state them briefly,—as general manager of the company, Mr. Ackert?
A. Manager of the business in the divisions and St. Louis, so far as the agencies and marketing, etc.

Q. That is, you have general charge of what is called the marketing department?
A. Yes, sir.
Q. Marketing of all oils?
A. Yes, sir.
Q. And products of the company?
A. Yes, sir.
Q. Can you tell us, Mr. Ackert, how many stations the Waters Pierce Oil Company has in Texas, all told?
A. I think it is about four hundred and fifty; that is pretty close, I haven't the figures with me.
Q. You have one or more stations in every county in the State, haven't you?
A. Yes, sir.
Q. When I say you, I mean the company.
A. Waters Pierce Oil Company.
Q. You recall from memory the number of so-called tank stations, as distinguished from the other stations?
A. From memory I should say that there were about two hundred and fifty.
Q. By tank stations you mean stations at which there are storage tanks for the purpose of storing and keeping oil in bulk for distribution to the trade?
A. It is where we have one or more tanks.
Q. At each station you employ an agent?
A. Yes, sir.
1528 Q. Who is in charge of the agency or the business at that station?
A. Yes, sir, and what other employees are necessary to properly transact the business.
Q. But you have an agent who is in charge of the business at each particular station?
A. At each station we have an agent.
Q. And at many of the stations the agents have assistants or subordinates to assist in carrying on the business of the company?
A. Yes, sir.
Q. Now, you have a great many agents who are on a salary?
A. Yes, sir.
Q. You have a great many agents who are paid a commission on the quantity of oil which they sell?
A. Yes, sir.
Q. How many paid agents are there?
A. Let's see. There are about one hundred and fifty of them.
Q. Isn't there an agent to each station?
A. Not of the paid agents; there are commissioned and salaried agents; the commissioned agents get so much per barrel.
Q. Then there are commission agents?
A. Yes, sir; commissioned agents and salaried agents.
Q. How many employees has the company in Texas?
A. About 450.
Q. Does that include the employees at the division headquarters?

A. Yes, sir.
Q. There are more there?
A. Yes, sir, in the way of clerks, etc., there are about at each divisional headquarters fifteen or eighteen altogether.
Q. How many tank wagons does the company operate in the State?
A. Tank wagons and can wagons, about one hundred and fifty.
1529 Q. You know how many tank wagons as distinguished from the can wagons?
A. I should say about two-thirds of them, or more.
Q. Aren't there more than one hundred and fifty, Mr. Ackert?
A. I think that is about what it is, about one hundred and fifty.
Q. How many divisions are there in the State, so-called divisions in the State.
A. Central Texas, headquarters at Dallas, Mr. Cahoon, and South Texas Division.
Q. Their headquarters are at Houston, and Mr. Fries is the manager?
A. Yes, sir; and the East Texas and Louisiana Division,—headquarters at Shreveport.
Q. Who is the manager there?
A. Mr. D. A. Vann.
Q. Who preceded him?
A. Mr. J. H. Littlefield.
Q. When was Mr. Littlefield transferred or relieved from duty as manager at Shreveport?
A. About two weeks ago.
Q. You recall the date?
A. A week ago on Saturday; I think it was on Saturday.
Q. Mr. Vann was appointed to succeed him?
A. Yes, sir.
Q. Then, there is the Oklahoma Division?
A. Yes, sir.
Q. Which Division has a number of agencies in the Panhandle of Texas, that is, it takes in quite a large area of the Panhandle?
A. Yes, sir.
Q. And the Louisiana and East Texas Division takes in——
A. The eastern part of Texas.
1530 Q. There are two Divisions wholly within the State?
A. Yes, sir.
Q. These distributions are for the convenient distribution or marketing of oil or oil product, is it not?
A. Yes, sir.
Q. How do the division managers have control over the agents, all the agents in their respective divisions?
A. They have control of all of them in their respective divisions, and the marketing of oil and the handling of the Waters Pierce Oil Company's business in each of their divisions.
Q. And they communicate with the home office?
A. Yes, sir.

Q. And the home office communicates directly with them?

A. Yes sir.

Q. There is no immediate communication or connection between the home office and the agents in the different divisions?

A. How?

Q. I say there is no immediate connection or communication between the home office and the agents in the different divisions?

A. No, sir, it is direct with the manager at the division headquarters.

Q. And these division managers have charge of the marketing of the oil in their divisions? And all the facilities?

A. All of the facilities and the handling of the entire business of the company in their divisions.

Q. Mr. Ackert, what percentage of oil sold by the company within the State is distributed to the trade in bulk, that is, by tank wagons or by cans?

A. Sixty to sixty-five per cent. of the total sales of refined oil in Texas is sold from tank wagons or cans.

1531 Q. And the distributions are made from central storage points?

A. From our tank stations, which ever is the most convenient.

Q. And where you cannot reach the trade by tank wagons or by cans you make your shipments how?

A. In iron barrels; we have a supply of iron barrels in addition to our tank wagons and cans, to take care of the business in Texas.

Q. How many iron barrels does the Company own and operate in Texas?

A. About fifteen thousand, I should say.

Q. They are shipped out to fill orders beyond the reach of tank bulk deliveries, and the barrels are ultimately returned to the Company?

A. Yes, sir.

Q. What facilities have the retail dealers which you—which the company furnishes, to be filled with bulk oil from tank wagons and cans?

A. They have 50, 75, 100, and 150 and 200 gallon-tanks,—pump tanks.

Q. Those are called store tanks?

A. Or store tanks. They can buy them from the Waters Pierce Oil Company; and we have them for sale; our tank-wagons make the delivery into these tanks.

Q. They are provided with a pump, by means of which the oil is—the oil or gasoline, as the case may be,—can be readily pumped out into a smaller vessel,—the can of a customer, for instance?

A. Every convenience for our customers; yes, sir.

Q. Have you, as general manager, and the agents under you, encouraged the use of these store tanks,—the adoption of them by your customers?

A. To the fullest extent.

Q. Now, all the oil which was handled by the Company in bulk is transported from the refinery in tank cars, is it not?

A. Yes, sir.

1532 Q. Whether it be Chaison, or Corsicana, or Whiting, or Neodesha, or Sugar Creek?

A. It is all handled in tank cars.

Q. How many tank cars does the Waters Pierce Oil Company own and operate for the carrying of oil within the territory in which it operates, including Texas?

A. And Mexico?

Q. No; take the United States.

A. I haven't the figures before me here, but it is somewheres between eighty and a hundred; possibly a hundred; may be a little more; it is in the neighborhood of a hundred tank cars.

Q. When its equipment of tank cars are not sufficient for its business, it rents or hires tank cars from the Union Tank Line, does it not?

A. Yes, sir.

Q. And the deliverey of the bulk oil is made in those cars?

A. Yes, sir; we have also——

Q. Now, the process of supplying the trade begins at the refinery, by filling into a tank car, or tanks cars, the oil or gasoline, shipping it to the tank station, say, in Texas; transferring the contents of the tank car into a storage tank; then distributing from that storage tanks, according to the requirements, into tank wagons, into cans or into iron barrels, as the case may be.

A. It is a bulk deliverey all the way from the refinery into the merchants' tanks.

Q. Your tank wagons at the different tank stations make regular rounds through or over a certain route every day or so; many times every week.

A. Yes, sir; a sufficient amount to take care of the trade; to keep them all supplied.

1533 Q. And where you haven't sufficient tank wagons for the purpose of supplying your customers, you then transfer the oil from the storage tanks into cans, ten-gallon cans, load the cans into wagons, and distribute those cans around to the customers?

A. In the same way, giving the customer the benefit of the bulk delivery.

Q. Then, in localities beyond the reach of the tank wagons and cans, you fill the iron barrels from the storage tank, and ship them by rail to the point at which the purchaser resides?

A. Yes, sir.

Q. Mr. Ackert, how long has the Waters Pierce Oil Company, so far as you know, been engaged in building up this system of facilities which you have described?

A. Ever since they were first organized; and continually improved from time to time.

Q. What has been the method since you were connected with the General Manager's office, with respect to increasing those facilities, increasing bulk deliveries, increasing and establishing agencies, increasing facilities for reaching outlying and new localities?

A. It is one of our principal duties required of all of our people in the field, to watch that; just as quick as a town has grown to a

sufficient extent to warrant a tank station, or additional tanks are necessary, the manager comes to the home office with his recommendations. It is very frequently, nearly always the case, that the people—the residents of the towns—make application to put in a tank station. It is safe to say that in the last ten years, that ninety per cent. of all the tankage we have put in, we have had applications from the merchants at those towns to locate our warehouse, our tanks, etc., in them.

Q. So as to give them the conveniences and facilities of handling oil?

A. For the benefit of that. In a few instances we had to
1534 take them out, because the business did not justify it; and in each case where we have, we have had a very strong complaint from the merchants of those towns because we had done it; and in many cases, we had to extend our tank wagon deliveries to those towns where the tanks had been taken out, to have the trade feel entirely satisfied.

Q. Can you give any idea of the percentage of increase in the new facilities established since the present company was incorporated?

A. I should say that they had increased practically fifty per cent., or nearly that.

Q. Since the new company was organized?

A. Yes, sir; in rebuilding tanks, in extending the tankage and in building new plants.

Q. Do you know how many plants in the State or stations in the State the company has, at which it owns the land in fee and which are substantially improved.

A. Nearly,—well, there is a number,—fifteen or twenty,—I should say; I haven't the number with me.

Q. You have a station of that kind in all of the principal towns?

A. In nearly all of the principal towns we own property.

Q. You have one at Galveston?

A. We have.

Q. How extensive is it?

A. Quite a large one.

Q. At Houston?

A. Yes, sir, it is a very large one; recently rebuilt.

Q. It burned out?

A. No, it didn't burn out; it was too small.

Q. I mean the old plant.

A. Only in part; the fire didn't amount to anything. It was too small. We bought some land and spent forty or fifty
1535 thousand dollars at Houston for a new and thoroughly up-to-date plant.

Q. Can you mention other towns at which the company owns those stations in fee?

A. At Dallas; at Galveston,—I think that was mentioned; there is a number of small——

Q. At Fort Worth?

A. No, not at Fort Worth; a part of it only; a part of it in fee, and a part leased.

Q. You say there are twenty odd plants?

A. Yes; large and small, but a number are small.

Q. And at other stations the Company has leased the lands and improved the lands?

A. Yes, sir, and improved them.

Q. And their are some stations that the commission agents themselves provide the premises?

A. At very few in that way. Nearly all of that is leased, and we have our tankage.

Q. Mr. Ackert, what have these facilities to do with your ability to supply the trade, the retail trade, with the products dealt in by the Waters Pierce Oil Company?

A. It has altogether to do with it; we carry it in bulk; we try always to have enough of every product on hand, either in tankage or barrels, to fill any order. If we haven't it there, it is drawn from any point near, or the nearest point.

Q. During your lond experience with the Company, I suppose you gained some knowledge. What knowledge did you gain with respect to the old system of making delivery of oils to retail dealers in wooden barrels?

A. It was very unsatisfactory; there was leakage; always claims; and the cost of handling the barrels was excessive; the gluing
1536 and coopering; and in the collecting of the barrels. There was liability to be—the oil was liable to get off-color, complaints on account of that would be made; and there is no comparison at all between the two, because the one is old and out-of-date, and the bulk package is what the customers want, and they insist upon it. In addition to our tankage, we have put in,—in many cases the customers in the smaller towns have come to us and asked us to put on our tank-wagons, and I know of many cases where we had to be gone two days with five hundred gallons of oil. It is very expensive in rainy weather like this. If we dropped off for a week, we got any number of complaints, so that the trade expects us to come at certain periods during the whole year, regardless of weather.

Q. State whether or not you have, as general manager, kept posted with the business done by your competitors throughout the State.

A. I have.

Q. How, as a general thing, did the prices at which the Company has sold to the trade from time to time in the State, compare with the prices of corresponding grades of oil at which the Company's competitors sold?

A. It is nearly in all cases higher than the competitor; all for the one fact of our bulk deliveries. We have the large number of tank-wagons and cans, and I believe there are only ten or fifteen tank wagons of the whole competitors in the State. They make very few, if any, of the interior deliveries, and the only manner that they have of getting the oil out is in barrels, wood barrels, some few iron barrels; and because of that we maintain and are able to maintain from a half up to three-quarters and a cent, and sometimes a cent and a half, above what the other people ask for it; and the trade seem willing and entirely glad to pay us that difference. The in-

terior deliveries are expensive; they fully appreciate that, and
1537 that they get the full measure, as against the loss of the wood or iron barrels, as it goes out from our competitors. In addition, it is the hauling out from the railroad points which is avoided.

Q. Mr. Ackert, do you remember when the first so-called executive committee was organized at the home office in St. Louis?

A. I do.

Q. About what time was that?

A. It was, I think, in the summer of 1900, possibly June or July; I have just forgotten the date.

Q. Were you on that committee?

A. I was.

Q. The organization was informal, I believe.

A. It was, yes, sir.

Q. When was the formal organization effected by resolution of the board of directors?

A. Some time in 1902; I have just forgotten the date.

Q. Who composed that committee; do you recall?

A. Mr. A. M. Finlay, Mr. C. A. Pierce, Mr. C. M. Adams, Mr. J. P. Gruet, and myself and yourself, and Mr. H. C. Pierce was there; he always attended.

Q. Mr. Stephen Johnson?

A. And Mr. Stephen Johnson.

Q. In other words, made up of heads of departments?

A. Heads of departments.

Q. The president presided?

A. Yes, sir.

Q. How long did that committee continue in operation?

A. Until September, 1904, I think; about that time.

Q. What matters, in a general way, were referred to that committee and considered by it?

A. All matters of a general character.

1538 Q. That is, outside of the regular——

A. Regular current business, yes, sir.

Q. They discussed and passed upon questions, and advised, and acted in advisory capacity to the president?

A. Yes, sir; and the handling of the company's business, except in detail.

Q. Now, during the time of the continuance of those committees,—but before coming to that question. The executive committee was dissolved in the fall of 1904, wasn't it?

A. Yes, sir.

Q. By resolution of the board,—the board under which it was organized? Afterwards, was there any organization effected,—after that?

A. Not for a time.

Q. Well, when was a subsequent organization effected?

A. In October or November, 1906.

Q. That was an advisory committee, too?

A. Yes, sir.

Q. Who composes that committee?

A. Mr. C. A. Pierce, the president, Mr. A. M. Finlay, Mr. Edward Stanley, Mr. C. L. Harris, and myself.

Q. The heads of departments?

A. The heads of departments.

Q. Now, at the time of the organization of the first executive committee, the information organization, down to the time of the dissolution of the formal and regular executive committee,—how were the selling prices of the commodities of the company fixed or determined on?

A. They were all passed on by the committee.

Q. Well, how was it done,—state briefly how.

A. The letters as regards the prices—all of the correspond-
1539 ence from each of our divisions came to my office, and they were all submitted to the executive committee.

Q. Well, propositions came up to change the price of a commodity at a certain point?

A. Mr. Cahoon, as an illustration, would have one or more points where he considered that a change was advisable, and he would submit it to me, with recommendations; I would take it to the committee, and we would consider it. We would have our costs and everything that gave full information, and there it was decided whether it would go into effect. If we put in an advance or a decline, that was considered in that way.

Q. What had the Standard Oil Company, or what did anybody else have to do with the fixing of prices during that time, if anything?

A. Absolutely none whatever.

Q. How were the fixing or changes in prices arranged or made after the dissolution of the executive committee in the fall of 1904 and until the advisory committee was created or begun to act?

A. By the officers of the Company.

Q. What officers?

A. Mr. A. M. Finlay, Mr. W. P. Tinsley and myself.

Q. Anybody else have anything to do with it?

A. Mr. C. A. Pierce.

Q. How were the prices determined during that period; upon what basis did you fix the prices?

A. Our prices before that period were already in effect, and we simply advanced or declined, as the case might be, according to the market prices of oils or gasoline.

Q. That is to say you might raise prices throughout the State of Texas, or you might lower them; or you might raise the prices at one or two or three stations?

1540 A. According to the recommendation or advice of our people in the field,—of the managers.

Q. Then, in what way did the method of fixing prices differ during that time, from the method pursued while the executive committee was in existence?

A. Exactly the same as before.

Q. That appertains to the prices at which the Company sold its commodities in Texas, as well as in other States?

A. In all portions that the Waters Pierce Oil Company operated.

Q. Now, state whether or not the Standard Oil people or the Standard Oil Company, or any one besides the officers you spoke of, had anything to do with the fixing of prices during the period you mentioned?

A. None whatever.

Q. What has been the method pursued in fixing prices since this last advisory committee began to act?

A. Just the same as previous,—in the executive committee or in the last six or seven years,—ever since the re-organization of the company.

Q. Do you remember when Mr. Tinsley first went to St. Louis?

A. I do.

Q. About what time was it?

A. March, 1904.

Q. What were his duties at first; what duties did he perform, if you remember, in a general way?

A. Why, in the accounting some; various matters,—didn't amount to very much.

Q. He nosed around generally, didn't he?

A. Yes; that is all,—practically nothing.

Q. Do you remember the date at which Mr. Finlay, the president, I mean, had sick leave of absence.

1541 A. In February, 1905.

Q. He was the president?

A. He was the president, yes, sir.

Q. Do you recall when Mr. A. M. Finlay became president; it was in February, 1904, was it not?

A. I think it was, yes.

Q. Who performed the duties of president during the time of February, 1904, up to the time that Mr. Finlay had sick-leave?

A. Mr. Finlay.

Q. How long was he away?

A. From February, about the middle of February, until June 15th, I think of the same year.

Q. Who performed the duties as president—who acted as president during his absence?

A. Mr. R. P. Tinsley.

Q. During that time who fixed the prices at which the commodities were sold?

A. Why, he did and myself and Mr. C. A. Pierce.

Q. All continued to act in that capacity?

A. In the same capacity.

Q. Do you remember when Mr. Tinsley left St. Louis?

A. About June 1, 1905.

Q. Do you remember when he resigned as vice-president and director of the company?

A. About that time.

Q. And who succeeded him as president?

A. Mr. C. A. Pierce.

Q. Who became vice-president?

A. Mr. A. M. Finlay.
Q. Who have occupied those positions since?
A. Mr. C. A. Pierce and Mr. Andrew M. Finlay.
1542 Q. Now, Mr. Ackert, I want you to state generally whether or not the Waters Pierce Oil Company has been operated as an independent company since the time of its organization down to the present time.

Mr. BATTS: I think that is a conclusion of the witness——

Q. (Continued:) Under the management and direction of its officers at St. Louis?

Mr. BATTS: I object to it as a conclusion.
The COURT: The objection that it calls for a conclusion is sustained.
Mr. JOHNSON: Defendant excepts.

Q. Well, who since its organization has managed the business affairs of the Company, and fixed the prices and determined the quantity of oil that it would sell?
A. Mr. C. A. Pierce, the president, Mr. A. M. Finlay, the vice-president, and myself.
Q. And since—how was it while Tinsley was there?
A. Mr. Tinsley, Mr. Finlay, Mr. Pierce and myself.
Q. How has it been since Mr. C. A. Pierce was made president?
A. Just the same—Mr. C. A. Pierce, Mr. Andrew M. Finlay and myself. (To the Stenographer:) "Just the same" should be left out.
Q. Mr. Ackert, you spoke of the purchase by the Waters Pierce Oil Company of the Southwestern Oil Company in St. Louis. What did you mean? That the Waters Pierce Oil Company had purchased the plant?
A. Yes, sir.
Q. After the Southwestern Oil Company had gone out of business?
A. Yes, sir.
Q. Do you know Mr. Grinner?
A. I do.
Q. H. H. Grinner, isn't it?
A. H. C. Grinner.
1543 Q. How long has he been in the employ of the Waters Pierce Oil Company?
A. Since 1891 or '92, possibly 1890. It is between 1890 and '92; I have forgotten which.
Q. What has he been doing during that time?
A. To operate and manage that part of the buisness.
Q. That is——
A. That is, the International Oil Works.
Q. That fact is generally known in the city of St. Louis?
A. Yes, sir, it is.
Q. Among the trade?
A. It is, among the trade.
Q. Mr. Ackert, do you remember when the Republic Oil Company began doing business in St. Louis?

A. I do.

Q. About what time was it?

A. As I remember, about 1901. I have forgotten; somewhere about there.

Q. When did you first learn that it was a Standard Oil interest?

A. When this first came up in the courts.

Q. That is, when the Missouri case was brought?

A. When the Missouri case was brought, is when I knew definitely.

Q. What knowledge had you as manager of the Waters Pierce Oil Company of any connection between the Republic Oil Company and any Standard Oil Company?

A. I had none whatever.

Q. Where did the Republic Oil Company begin doing business when it opened up in St. Louis? At any other point besides St. Louis?

A. I think that was the only point in our territory, in the Waters Pierce Oil Company territory, where they operated.

1544 Q. They operated from St. Louis?

A. From St. Louis; but it was the only tank station.

Q. It established a tank station in St. Louis. Any tank wagons?

A. Had four or five tank-wagons.

Q. Any salesmen?

A. Had about three or four salesmen.

Q. Where did the tank-wagons operate?

A. In the City of St. Louis.

Q. Where did the salesmen operate?

A. In the city and out in Missouri.

Q. In the Missouri Division?

A. Practically all over the Division.

Q. How long did they continue to operate in that way?

A. They continued up to about five or six months ago.

Q. What policy did the Waters Pierce Oil Company adopt towards the Republic Oil Company, so far as competing with it is concerned?

A. They went after their business just as hard as they knew how.

Q. How long did they keep it up?

A. To the end.

Q. So you had your suspicions in regard to its connections?

A. I did for two or three years before, but I had nothing to prove it by.

Q. Notwithstanding that, you competed with it all the time?

A. Just as hard as we knew how.

Q. You were asked on direct examination about the quotation of prices by the Standard Oil Company. You understood that question to mean the selling prices——

A. It is the selling prices.

Q. Now, the fact that the Standard Oil Company, because of the large output of refined oil, really determines the general market price throughout the country, of refined oil?

1545 A. That is what I understand.

Q. State whether or not there are changes made in the prices by the Standard Oil Company to the trade generally.

A. There are frequently.

Q. Do those prices apply to the Waters Pierce Oil Company, the same as everybody else?

A. The same as any other large concern.

Q. Yes?

A. Yes, sir.

Q. Associate counsel suggests that I may not have made myself clearly understood in regard to this matter. I mean the quotation of prices—refinery prices or selling prices—by the Standard Oil Company to the trade generally.

A. Not to any of the trade in the territory, but it is to the Waters Pierce Oil Company, you mean?

Q. Well, doesn't it fix the prices generally, of the market generally,—the selling prices?

A. As I understand, it does. There is a report of the market prices in all of the papers—New York, Pittsburg papers, etc.

Q. State whether or not all other dealers or refineries do not follow the general prices fixed by the Standard Oil Company.

A. It is my understanding that they do.

Q. In other words, the Standard Oil Company and its allied companies determine and establish the market price throughout the country?

A. It is largely the same with the people in the Waters Pierce Oil Company.

Q. Then these quotations made by the Standard to the Waters Pierce Oil Company are on changes in the general market price from time to time of the commodity mentioned?

A. It fluctuates from time to time.

1546 Q. On refined oil and gasoline?

A. On all products.

Q. That has no relation to the prices at which the Waters Pierce Oil Company sells to the trade in Texas or elsewhere?

A. Absolutely none. We make our own prices.

Q. You were asked a question by Mr. Batts; I judge that your didn't understand when you made the answer. You, of your own knowledge, know nothing about the original arrangement made between Mr. Pierce and Colonel Thompson and others connected with the Standard Oil Company of Ohio, way back in 1878, regarding the territorial limits in which the Waters Pierce Oil Company, the old company, I mean, was to do business.

A. None whatever.

Q. When you went with the Waters Pierce Oil Company, it was doing business in the same territory it is doing business in now?

A. Yes, sir.

Q. That is all you know about it?

A. That is all I know about it at all.

Q. Now, that question related to knowledge on your part of the Standard Oil Company beginning selling oil in Louisiana, west of the Mississippi River; you don't know whether it was doing so in violation of any understanding or not, do you?

A. Nothing whatever.

Q. All you know is that the Standard Oil Company did go into

that territory and establish tank stations in competition to the Waters Pierce Oil Company?

A. I knew that, and we immediately took steps to protect ourselves.

Q. Yes, and you have beaten them out pretty nearly, haven't you?

A. Practically so.

Q. You have the same perfect organization of plants, system and method, and intelligent employees, west of the Mississippi
1547 River, that you have in Texas and elsewhere?

A. Just the same; they are practically doing no business, notwithstanding the efforts of a half dozen salesmen.

Q. The Standard Oil Company has also started in business in the portion of Illinois, that the Waters Pierce Oil Company has for years been doing business?

A. In East St. Louis; yes, sir.

Q. When did it begin there?

A. In May, 1906.

Q. And what has been the policy in respect to competing there?

A. To aggressively go after the competition.

Q. What has been the result?

A. We have practically held all of the business to date in that way.

Q. They are still competing?

A. They are.

Q. In both localities?

A. They are.

Q. There is no sham about that?

A. None whatever.

Q. As far as the Waters Pierce Oil Company is concerned?

A. Absolutely none.

Q. In neither instance?

A. No, sir.

Q. You don't know anything much about the refining of oil, do you, Mr. Ackert?

A. No, sir, I don't. It is out of my line.

Q. But you do know something about the product?

A. I do.

Q. You stated, I believe, that Eupion was the best grade of oil sold by the Waters Pierce Oil Company?

A. I did.

1548 Q. And that it had established a very large trade in it under that name,—that trade name?

A. I did.

Q. And that Eupion, while it is the same in quality, varies as to fire test?

A. It does.

Q. Do you know why that is?

A. In some States they require a hundred——

Q. Isn't it because of the crude oil——

Mr. ALLEN: We object to that. The witness has started to answer, and let him answer the question, and not the counsel.

Mr. JOHNSON: I was afraid he had misapprehended the question.

A. On account of some of the States having a law of 150 fire test, while in other States it is lower, or there isn't any. We have always considered that a lower fire test is better than a 150 fire test, unless you go too low.

Q. That is, until you get too low?

A. Until you get too low.

Q. Then the fire test has practically nothing to do with the burning-quality of the oil?

A. Down to a certain point?

Q. Or up to a certain point?

A. That is right.

Q. What is—what difference—what does the difference in fire test make as to the burning quality of oil; take, for instance, 120 degrees, so-called fire-test, and 150 degrees so-called fire test?

A. It is considered that the 120 is a good deal better than the 150.

1540 Q. In all respects?

A. In all respects; it is a better burner and it gives a better light than the 150; it is generally conceded that the 120 to 125 is better than 150.

Q. Really, the only difference is that the 120 is a little more volatile than the 150?

A. Yes, sir.

Q. And burns freer?

A. Burns freer.

Q. But the quality of oil is practically the same?

A. Yes, sir.

Q. Mr. Ackert, state whether or not you ever authorized the selling in Texas, at any time, of Prime White 112 degrees fire test, for Eupion.

A. No, sir, I have not.

Q. Instead of the regular Eupion brand?

A. I have not.

Q. Did you ever know of that being done?

A. I understood from Mr. Cahoon here yesterday, and I think that he reported it, that at one time it was done, and we immediately gave instructions that it be stopped, and I have issued letters to the managers, that if we didn't have the Eupion Oil, to go to the customers and inform them that we didn't have it, but that it was on the way. I have held meetings in each of our headquarters during the last year, and I have positively directed the managers and salesmen they should not *het* out and sell any lower grade for Eupion; and I think they all thoroughly understand it.

Q. What has been your policy since you became general manager, with dealing with the trade in that way?

A. With strict integrity; we feel that that is the capital stock.

1550 Q. You spoke of meeting with your agents; how often do you hold meetings with your agents?

A. Every four or five months we try to. I am not always present, but I try to be present as often as I can; that means all of our agents,—salaried agents and commission agents.

Q. Now, of your knowledge and the present state of business of the Waters Pierce Oil Company, state whether or not the amount of the company's business in Texas to-day—state what it results from, and your ability to hold the trade or to do the business that you do, against the competition that exists.

A. It is the quality of our oils, the men that we have, and the strict integrity and open manner in which we go after the business. It enables us to hold as large a percentage as it does. We try to have in every position men of strict integrity, men whom the people at large can place confidence in, and as soon as we find that any of our men are not of that class, that are not treating the people as they should, in a strict integrity, in a manner which makes or has the trade feel full confidence in the Waters Pierce Oil Company—that they are able to give first-class oils, to give first-class service—we simply make a change; we do that as soon as we can after we find that they are not of that calibre of men.

Q. Who has—what have you had to do with the purchase of oil supplies, Mr. Ackert?

A. I haven't had very much to do with that.

Q. Well, haven't you had anything to do with it?

A. Practically nothing.

Q. Who has had charge of that?

A. Mr. Andrew M. Finlay.

Q. What is the process—through what channels do requisitions or requests for supplies at the agencies, go?

1551 A. At the agencies?

Q. Yes.

A. The agencies make their orders on the main office or the division office, for carloads or less, as the case may be, and these orders are made up in the division office and sent to the home office in St. Louis, to Mr. Andrew M. Finlay.

Q. Do they all go direct to him?

A. Go direct to him.

Q. You- statement as to the policy pursued towards the trade, a moment ago, referred to the period since you have been general manager of the Company?

A. Yes, sir.

Mr. JOHNSON: I believe that is all.

Redirect examination.

(By Mr. BATTS:)

Q. The relations between the Waters Pierce Oil Company and the Standard Oil Company are just the same that they have been ever since it was incorporated, are they not?

A. What do you mean?

Q. Well, has there been any change in the course of business of the Standard Oil Company with reference to the Waters Pierce Oil Company during that period?

A. On prices?

Q. Anything.

A. I have had practically nothing to do with any correspondence or knowledge of the S. O. Company, in matters of that kind.

Q. Now, you seem to know most everything about the business when you are interrogated by your counsel, and you have
1552 been on the executive committee all the time, and you state that everything that pertains to the company comes before the committee. I want to know if at any time since May 29, 1900, there has been any change in the attitude of the Standard Oil Company towards the Waters Pierce Oil Company in the management of the business of the letter?

A. The Waters Pierce Oil Company have always managed their own business.

Q. Now, will you answer the question that I have asked you?

A. I don't know that there has been any change, because the Waters Pierce Oil Company has always done it.

Q. Very well, it has been auditing the accounts all the time?

A. I couldn't say whether it has or not.

Q. You still state that you were a member of that executive committee, but can't tell me whether or not the Standard Oil Company has been auditing the accounts, has been doing it all the time?

A. I have heard of no auditors for two years.

Q. Prior to that time there were?

A. Prior to that time?

Q. I am talking about that corporation.

A. There were auditors that came there during that time.

Q. Up to about two years ago?

A. I think so; yes, sir.

Q. About two years ago they stopped. What time was the suit up in Missouri filed?

A. I couldn't tell you, sir.

Q. What reference did that have—the suit up in Missouri?

A. I do not know.

Q. Well, it was talked about before the Executive Committee, was it not?

A. No, sir, it was not.

1553 Q. Now, as a member of the executive committee, and as a member of the family, and one of the officers of the Waters Pierce Oil Company's wasn't the affairs of that company and its relations to the Standard Oil Company, discussed?

A. No, sir, not in that way, as regards the management of the business.

Q. Well, was the matter of its stock-ownership discussed?

A. No, sir.

Q. When did you first learn of the ownership by the Standard Oil Company of the stock of the Waters Pierce Oil Company?

A. In the papers.

Q. Notwithstanding you are a member of the executive committee;

notwithstanding you knew about the affairs generally; notwithstanding the letters received daily from 26 Broadway; notwithstanding you are a relative of H. Clay Pierce; notwithstanding you met all these persons every day there,—you didn't know anything about it?

A. I do not know what stock the Standard Oil Company had, or anything about it.

Q. And don't know that it owned any stock?

A. I do not know.

Q. Now, I understand you to say that the general attitude of your business is to be entirely open and frank to the people of Texas?

A. Yes, sir, absolutely.

Q. And yet the stock-ownership of the Waters Pierce Oil Company was not disclosed even to you?

A. I had nothing to do with the stock or any part of it.

Q. And didn't know about it?

A. I had no means of knowing about it.

Q. You recall the testimony given by Mr. Pierce, to the
1554 effect that he had been informed that the Standard Oil Company methods would no longer be tolerated in Texas?

A. I knew of that?

Q. What was meant by that?

Judge PENN: We object, Your Honor; it is not competent to call on one witness to explain what another witness meant by his testimony.

The COURT: If the witness knows, he can state.

A. I do not know.

Q. Well, you don't know what that meant?

A. No, sir.

Q. I will ask you if there has been any change in the character of your relations to the people of Texas since May 29, 1900? Have you just since that time begun to treat them honestly, and have honest employees?

A. I didn't have anything to do with the business in Texas before that. I assume the company always tried to assume its high dignity of first class employees.

Q. You don't understand that there has been any change since May, 1900?

A. I don't know anything about it.

Q. And don't know what was meant by Mr. Pierce's statement that the Standard Oil Company's methods would not be tolerated in Texas?

A. Mr. Pierce didn't tell me; I don't know what that means.

Q. In your executive committee meetings, as I understand, that this committee up to the time that Mr. Tinsley came, had absolute charge of the corporation?

A. Yes, sir.

Q. And I will ask you, if in your talk or by any action put down on your books, you determined that you would abandon the
1555 methods of the Standard Oil Company in Texas, and conduct the business in an honest and decent way in Texas?

A. It was the same manner that we did previous to Mr. Tinsley's coming, and continued when he was there.

Q. Now, I am talking since May 29, 1900; did you take any such action in your Committee?

A. I do not understand you.

Q. Did you talk over or take any official action, changing the character of the business or the way in which you conducted business in Texas?

A. It was not talked over at all.

Q. Now, as I understand it, this executive committee had absolute control of the affairs of the company.

A. It did.

Q. Any time during that period was there a discussion of the matter of trying to get your oil from some supply other than the Standard Oil Company?

A. We have bought during that time from the Gulf Refining Company. There was no other company that could supply us.

Q. The Gulf Refining Company couldn't supply you?

A. No, sir, they couldn't supply all?

Q. Could the Texas Company?

A. No, sir.

Q. Can you tell me the output of those companies?

A. No, sir.

Q. Then how do you know?

A. Because I understood the companies couldn't do it.

Q. How did you hear that?

A. I simply heard——

Q. Where did you hear that?

A. I heard they exported most of their oils.

1556 Q. I asked if you discussed that in your Committee?

A. We have not.

Q. And what information did you undertake to acquire as to whether or not there was enough oil refined in Texas to supply the people in Texas?

A. We have simply understood that there was not.

Q. You don't know how much they did supply?

A. I don't know, because I understood most of it is exported.

Q. It could be used here, couldn't it?

A. I don't know. We haven't because it was not satisfactory.

Q. Now, what is the output of the refineries in Texas?

A. I can't tell you.

Q. How much—in all the refineries, how much oil is made of a quality equal to W. W. 120?

A. At Corsicana, is all.

Q. None at Chaison?

A. None at all equal to that or the northern oil.

Q. And how much oil is refined in Texas which you could use as Eupion oil?

A. I couldn't say how much.

Q. How much Eupion do you use in Texas?

A. About three-fourths of our total sales.

Q. What per cent. of all the oil business do you do in Texas?

A. I should say eighty per cent.
Q. Of the total business?
A. Of the total business.
Q. Eighty per cent.?
A. Eighty per cent.
Q. Isn't it more than that?
A. I couldn't say that it was.
1557 Q. Now, you have got some refineries in Mexico?
A. Yes, sir.
Q. You have never undertaken to establish any in Texas?
A. No, because we could get our oil cheaper here than we could make it.
Q. Do you know what it costs to refine oil?
A. I do not know in the United States; that isn't my part of the business.
Q. Well, how do you know that you can get it cheaper than refining it yourself?
A. I understood from others——
Q. How much have you understood from others; how much it costs to refine oil?
A. I do not know.
Q. Then you don't know whether you could refine it cheaper than you buy it, or not?
A. I have heard from those who know.
Q. From who?
A. Our people in St. Louis.
Q. Then you discussed it in the committee?
A. I do not know that it has been.
Q. What does it cost to refine oil in Mexico?
A. I couldn't tell you; I haven't the figures.
Q. Now, you stated this morning that the old agreement between the Standard Oil Company and the Waters Pierce Oil Company, made prior to the present re-incorporation, was observed afterwards; and you have stated this afternoon that you did not know anything about such an agreement. Why did you state this morning that it had been observed, if you did not know anything about it?
A. This morning I misunderstood your question.
1558 Q. Then you never had heard about any agreement between the Standard Oil Company and the Waters Pierce Oil Company?
A. Then I had not. I misunderstood your question this morning.
Q. You know, do you not, that there is a line between the Standard Oil Company and the Waters Pierce Oil Company?
A. I simply know where our agencies are; that is all. I will repeat again that I could not draw an imaginary line.
Q. You direct your agents not to go outside of that territory?
A. I have not directed them not to.
Q. You have directed them where to operate?
A. They know where to operate.
Q. How do they know?
A. Just from one agent to another.

Q. It has passed from one agent to another, as to where the line was; is that right?

A. Yes, sir.

Q. Now, you say that the Standard Oil Company has been getting into your territory, and that it is no sham. Has the circumstance that it is no sham been discussed in the committee?

A. No, sir.

Q. Have you discussed it elsewhere?

A. No, sir.

Q. Do you know what arrangement Mr. Pierce has made with the Standard Oil Company at 26 Broadway, about it?

A. I do not know.

Q. How do you know whether it is a sham or not?

A. From the way they have gone after the business.

Q. Do you know whether or not it has been arranged that they should go out after the business as though it were not a sham?

A. I do not know.

Q. You say the Republic Oil Company was doing business.

1559 You did not know it was a Standard Oil Company proposition?

A. I did not.

Q. They did not—Mr. Pierce did not let you know it was Standard Oil Company property?

A. I do not think he knew it himself.

Q. Then the Standard Oil Company didn't let Mr. Pierce know.

A. I do not know.

Q. So far as you know?

A. Yes, sir.

Q. It was not communicated to you in the Executive Committee, or as a member of the family?

A. No, sir.

Q. Now, does the Waters Pierce Oil Company also surreptitiously violate the agreement of the Standard Oil Company, and put in plants and conceal it from that company?

A. I do not know of any agreement.

Q. Well, you don't know of any arrangement upon which the Waters Pierce Oil Company surreptitiously goes into Standard Oil Company territory and maintains plants without letting the Standard Oil Company know of its character?

A. I do not know of any.

Q. But your belief is that the arrangement between the Waters Pierce Oil Company and the Standard Oil Company has been violated with regard to the Republic Oil Company doing business in St. Louis, and that it was not there as a sham?

A. I do not know of any arrangement; I simply know it was not there as a sham, and we went after their business as aggressively as any other.

Q. You don't know whether it was a part of the arrangement that you should go after the business that way?

A. Never was discussed that way.

1560 Q. But a great many things took place between Mr. Pierce and the Standard Oil Company, not communicated to you?

A. I do not know.

Q. Take, for instance, the matter of stock-ownership, that was not communicated to the executive committee?

A. I never heard of it.

Q. Never heard of it in your relation as a member of the committee or otherwise? So you are not in a position to say whether it had been agreed between Mr. Pierce and the Standard Oil Company, that the Republic Oil Company should appear to be in opposition to you down in St. Louis?

A. I don't think there was ever an agreement. I have no way of knowing, but I am positive that there was no agreement.

Q. Well, how are you positive about it; you know nothing about it?

A. Just the same as I am positive on anything else I am sure of.

Q. You had the same information about that as of the stock-*p*wnership?

Judge STEDMAN: We object to the further prosecution of this witness——

Mr. BATTS: Well, I will pass to something else, if you don't like that.

Q. Now, you say that the Standard Oil Company is so complete, that it fixes the price of all the refineries in the United States?

A. It has the largest output of oils in the United States.

Q. I ask you again to state if it is a fact or not, that its monopoly is so complete, that it fixes the price at which all the oil is sold in the United States?

A. I do not say its monopoly is so great.

Q. It fixes the prices?

A. It naturally fixes the prices on account of its output.

Q. Of all oils disposed of in the United States?

A. All refined oils.

1561 Q. All refined oils?

A. I think the other competitors follow it.

Q. They trail behind; you stated so in your examination——

A. Yes, sir.

Q. Didn't you, in your examination by counsel?

A. I stated so.

Q. The Standard Oil Company, then, fixes the price at which the refined oil is sold in the United States?

A. At which the refineries sell it.

Q. Now, it is a fact, is it not, that when you and Mr. C. Arthur Pierce, and Mr.—the gentleman sent there to nose around—what is his name?

A. Tinsley.

Q. Mr. Tinsley,—when you determined at what price you would permit Mr. Cahoon to sell oil in Texas, you fixed it with reference to the price which the Standard Oil Company had placed upon it at the refinery, did you not?

A. No, sir.

Q. Had nothing to do with it?

A. Absolutely nothing.

Q. Now, I will read you a part of what purports to be your former testimony in the case of the State of Missouri *vs.* Waters Pierce Oil Company, and ask you if you so testified:

"Q. The price at which it is billed to you by the Standard Oil Company, is accepted by you as the basis upon which you fix your price? A. It is."

Q. Did you so testify?

A. I presume I did.

Q. Well, when was it that you abandoned that as the basis?

A. We have not abandoned it.

Q. You have not abandoned it?

1562 A. Our prices generally are based on our cost—the same as any other mercantile house.

Q. And the Standard Oil Company fixes the cost?

A. They may fix the cost on oil, but so far as the selling price, they do not fix it.

Q. They fix it at the price it goes to you, and you fix it at which it is sold? Is or is not that the case?

A. No, sir, it is not. Our selling price would be based on what the conditions were at that time.

Q. Now, aren't these the circumstances that you take into consideration?

A. In that——

Q. Wait a minute. A certain price obtains and the Standard Oil Company informs you and the balance of the companies in the United States, that oil has gone up, say, a cent a barrel. Now, isn't it a fact that you immediately put up your price a cent a barrel?

A. Not always.

Q. What do you do?

A. We may put it up part, and not altogether; but we do not arrange our prices altogether on that basis.

Q. There are some other considerations you put there? For instance, if you have competition at a certain place, say, Greenville, or Commerce,—you may conclude that the trade would stand a one cent advance?

A. Not always.

Q. Not always?

A. Not always do we consider it on that basis.

Q. Now, let us consider the elements. It is what the Standard Oil Company alone says that oil all over the United States will be fixed at; the local conditions as to competition; the freight rate, and what else?

1563 A. And the marketing expenses.

Q. And the marketing expenses. Now, then, taking some specific case, that which you get it at from the Standard Oil Company is the biggest element, isn't it ?

A. The cost of any concern, is its basis.

Q. Well, will you just answer the specific question I have put to you?

A. Our cost, or our basis, are the same as any other concern.

Q. Now, in order to find out whether you fix the price, your executive committee, or the Standard Oil Company, I will call your atten-

tion to a letter already introduced, in which you were notified on September 1, 1904, "that on September 6th, an advance will be made in the billing prices of the following grades of gasoline;" what is meant by the billing prices?

A. It is the price at which we buy the gasoline.

Q. Now, at that time you were the General Manager, were you not, on September 1, 1904?

A. I think so, yes, sir.

Q. I will ask you to state if upon the receipt of that advance in price you didn't write a letter to each of your division managers to the effect that——

Mr. JOHNSON: That is not in evidence.

Mr. BATTS: Oh, I am going to get it there, though.

Q. You didn't write a letter to the effect——

Judge STEDMAN: Are you reading from a letter, Mr. Batts? We object to his reading from a letter, Your Honor, before we have an opportunity to inspect it, and before laying a basis for its introduction. We do not know what the letter is.

Mr. BATTS: I do not know whether I want to introduce it, or not.

Judge STEDMAN: We think it is but just to the witness
1564 that he should be shown the letter.

Mr. BATTS: Well, he can see it; I have no objection to his seeing it. (Hands letter to witness.)

Q. You don't recall the particular transaction?

A. No, sir, I don't.

Q. You don't know, then, whether you notified your division agents to advance prices in response to this letter, or not?

A. That purports to be a letter from my office, but I can't say whether I did or not.

Q. It's a common thing to have it advanced?

A. We advance if the cost increases.

Q. Advance when the cost increases?

A. Generally; we don't always.

Q. And notify your managers when to?

A. We do.

Q. Then the people at 26 Broadway determine what the price shall be down here in Texas?

A. No, sir.

Judge PENN: We object to that as argument, Your Honor.

Mr. BATTS: Well, don't get excited. I'll withdraw it.

Judge PENN: If the Court please, we object to counsel making side-bar remarks to us when we make objections to the Court.

Mr. BATTS: I will apologize for it.

The COURT: Yes, sir; Counsel will confine themselves to addressing the Court.

Q. Now you say the Standard Oil Company had nothing to do with the fixing of prices up there by the executive committee?

A. I do.

Q. Who fixes the executive committee?

A. No one fixes them.
1565 Q. Who determines who they shall be?
A. Who does?
Q. Yes, sir.
A. Officers of the Waters Pierce Oil Company.
Q. Who determines who the officers of the Waters Pierce Oil Company shall be?
A. Mr. H. C. Pierce.
Q. Mr. H. C. Pierce?
A. Yes, sir.
Q. He determines that?
A. So far as I know.
Q. Who owns the stock?
A. Who owns it?
Q. Yes.
A. Why, I can't tell you who owns it, only so far as I have seen in the papers, I stated.
Q. The officers of a corporation are ordinarily elected by the owners of the stock, aren't they?
A. Not always, I understand.
Q. You don't understand that to be the case?
A. Not always, no, sir.
Q. The officers of a corporation can be so elected, can't they?
A. They might; I don't know.

Judge PENN: If the Court please, that is a matter of law as to who controls or who elects officers of a corporation. We object to the witness being examined with reference to his opinion on questions of law.
The COURT: The objection is overruled.
Judge PENN: Defendant excepts.

Q. Now, if Mr. Pierce elects the officers of that corporation, it is because the Standard Oil Company permits him to do it, isn't it?
1566 A. I have no means of knowing.
Q. And you don't even now know that the Standard Oil Company owns a majority of the stock of that concern?
A. Only what I have seen in the papers and Mr. Pierce's testimony.
Q. But you know that Mr. Pierce names the officers of that corporation?
A. I have no personal knowledge of it.
Q. You so testified, didn't you?
A. So far as I know, he names them all.
Q. The directors and the officers of that corporation?
A. Yes, sir.
Q. And he has all the time?
A. So far as I know, he always has.
Q. He named Mr. Tinsley?
A. I don't know whether he did or not.
Q. You don't don't know who named Mr. Tinsley then?
A. No, I don't.

Q. Do you know who named Mr. Finlay?
A. I suppose Mr. Pierce did; I don't know.
Q. Well, you don't know, then—do you know whether he named Mr.—that auditor there, what's his name—Mr. Stanley; who named him?
A. I understand Mr. Pierce did.
Q. Well how did you get that information?
A. It's sort of understood that he did; I have no positive information.
Q. Who are the directors of that corporation?
A. I could not tell you, sir.
Q. You don't know who they are?
A. I could not tell you, no, sir.
Q. Well, how do you undertake to say who named them?
1567 A. Because the management of the Waters Pierce Oil Company has been in the hands of Mr. Pierce, so far as I know.
Q. Who sent Mr. Tinsley to St. Louis?
A. I have no advice.
Q. You know that he was sent there by Mr. Pierce?
A. I presume he was not.
Q. What makes you think that?
A. Because he left.
Q. You conclude from the fact that he left that Mr. Pierce didn't send him there?
A. That's my conclusion, that's all.
Q. He left after the Missouri suit was instituted, didn't he?
A. I could not say whether he did or not.
Q. You don't know?
A. I don't remember.
Q. Can you fix the time when he left?
A. He left the last of May or first of June, 1905.
Q. Now, you recall the testimony of Mr. Pierce to the effect that the offices were taken away from him when Mr. Tinsley came out there?
A. I have forgotton exactly what Mr. Pierce testified.
Q. Well, wasn't it something to that effect?
A. It might have been; I don't remember.
Q. Well, you have heard him say so, yourself, haven't you?
A. No, sir, I have not.
Q. You have been in the management all the time?
A. Yes, sir.
Q. During the time Mr. Finlay was there, was there any difference in the management of the concern, as compared with the way it was managed prior to that time and afterwards?
A. It was managed by the Waters Pierce Oil Company all the time.
1568 Q. Well, now, will you answer that question of mine? Was there any difference in the way in which it was managed?
A. There might have been.
Q. Well, what was the difference?
A. I don't know as I could state exactly.

Q. Well, was there any difference that you can state to the jury?
A. There might have been a difference.
Q. I will ask you if there was any difference that you can define or point out, mention or specify?
A. I don't know that I can mention any.
Q. Either before or after that time?
A. I don't know that I could mention any.
Q. Now, as general manager of the concern, as member of the executive committee while it was there, as manager of the concern with Mr. Tinsley, who was it that helped fixe the prices when Tinsley was there?
A. Mr. C. A. Pierce and Mr. Andrew Finlay.
Q. Mr. Finlay?
A. Yes, sir.
Q. As a member of the advisory committee since that time, I want to know from you if the business has been conducted in the same way all the time.
A. Then and now?
Q. All during that time?
A. Prices and all were fixed by the officers of the company, as I have explained.
Q. Yes, sir, but you won't answer questions, and I want you to do that. Was the business conducted in the same way all during that time?
A. Practically, yes, sir.
Q. What difference was there in the way in which business was conducted?
1569 A. There was no executive committee part of the time.
Q. That's the only difference?
A. As I remember.
Q. The people who first were on the executive committee still acted without being called the executive committee?
A. They acted, yes sir.
Q. Well, was there any difference?
A. There might have been some difference; I don't just remember. I don't think I could just explain what the difference was.
Q. You recall the circumstance that Mr. Pierce testified that he was taken out of the control of things and that things were different thereafter. Now, I want to know what the difference was?
A. I have forgotten just what he testified. It's on record. I say there might have been some changes, but I don't remember just what they were.
Q. You know that the directors that he had theretofore named were taken out of office—do you or not?
A. I don't know that any—I could not say, because I don't know who the directors were then, or who they are now.
Q. Now, you undertake to tell us all about everything in Texas, all your employees in Texas, method of doing business in every one of the counties in Texas and how many tank-wagons and just how they do business, how many barrels there are, and yet you can't

tell us about those things that take place in your office and under your immediate and direct supervision and within your own view?

A. It's a part of my business to look after this end of it.

Q. And it's a part of your business not to find out about these other things?

A. It's not in my part of it at all.

Q. Yes, sir. Now, you stated that the Standard Oil Company has increased its facilities in Texas—I mean the Waters Pierce
1570 Oil Company—fifty per cent. since 1900?

A. I should say nearly that, yes, sir.

Q. How much does that represent in dollars?

A. I could not say just exactly.

Q. What is the total equipment worth in Texas?

A. A million and a quarter, I should say.

Q. Million and a quarter.

A. Yes, sir.

Q. One-half of that has been put in since 1900?

A. I should say that we have increased fifty per cent. since 1900.

Q. And that during a time when dividends of six or seven hundred per cent. were brought in?

A. I don't know what the dividends were.

Q. Don't you know about that?

A. All I know is what has been testified.

Q. Member of the committee and in charge of the business and in touch with Mr. Pierce every day and a cousin of Mr. Pierce's?

A. I am looking after my part of the marketing end of it.

Q. And don't know the dividends declared by the company?

A. I have nothing to do with that part of it; whatever was done was done by the officers—I don't know what the dividends were, no, sir.

Q. That part of it you are not expected to know about?

A. It is not in my department.

Q. Well, at all events, of the million and a half of property in Texas, how much of it do you say has been put here since 1900—fifty per cent. since that time?

A. Of the property, I don't suppose there is a million and a quarter or a million and a half in property; the accounts and all would probably run a million and a quarter or million and a half.

Q. Well, it has been increased fifty per cent.?

A. Yes, sir, since 1900——

1571 Q. And that increase has been made——

Judge STEDMAN: Let him finish.

Q. Well, go ahead.

A. I said the accounts and the property of the Waters Pierce Oil Company would probably run from a million and a quarter to a million and a half, but the actual value of the real estate and the equipment will probably run five hundred thousand dollars.

Q. Well, then, you have got in Texas——

A. About five hundred thousand dollars.

Q. There has been an increase of about fifty per cent. since 1900?

A. Yes, sir.

Q. And that increase has been made notwithstanding whatever these dividends are?

A. I could not tell you, sir.

Q. Now, what per cent. of the business of the Waters Pierce Oil Company is done in this State?

A. I have not the figures here; I am sure I could not say.

Q. Well, now——

A. I should say not a half of it; I should say a third of it, possibly, in guessing at it.

Q. Well, what per cent. of the profits arise in Texas?

A. I could not tell you; it is impossible to tell you.

Q. You have no Standard Oil competition in Louisiana or Standard Oil competition in that part of Missouri that you are in,—have you or not?

A. We have competition there from them, yes, sir.

Q. Any competition from the Standard Oil Company in the Indian Territory and Oklahoma?

A. Not that I know of.

Q. No competition from the Standard Oil Company in Texas that you know of?

1572 A. None that I know of.

Q. Now, isn't Texas, so far as population is concerned, and the tank stations and the number of wagons that you have got,—aren't more than half of them in Texas?

A. No, I don't think they are.

Q. Forty-five per cent.?

A. I could not say exactly.

Q. Well, about that?

A. I could not say—could not say what per cent. of them.

Q. Now, I suppose that it was in pursuance of that plan of being entirely honest with the people of Texas that you did away with the Eagle Refining Company business?

A. It was known previous to that; as I understand, the people of Dallas knew it in 1895, but the people of Texas didn't.

Q. Some of the people, you mean?

A. Well, generally.

Q. Then, that had nothing to do with your anxiety to be honest and frank with the people of Texas—open and above board?

A. It was understood by the people of Texas, as I understand, that the Eagle Refining Company was owned and operated by the Waters Pierce Oil Company.

Q. And the busine[illegible]f Roy Campbell over there, I suppose you discontinued that on account of the fact that you wanted to be square with the people of Texas?

A. That was known back in 1895, as I understand.

Q. And I suppose, Mr. Ackert, that when you got a proposition from Mr. Cahoon to put in Brilliant as Eupion oil to meet competition up at Brownwood, that you immediately wrote him "We must not treat the people of Texas that way"?

A. I probably wrote to him that he could not make any

1573 any sales of Brilliant at Brownwood. I should say I did, but I don't remember it.

Q. An honest proposition?

A. I should say it was probably turned down—it would be naturally.

Q. His proposition to put in S. W. 112 at Corsicana, you turned that down as soon as you found out about it?

A. I presume we did. Positive instructions were not to make any sales of that kind.

Mr. BATTS: That's all.

Judge PENN: That's all.

Mr. BATTS: State rests.

Judge PENN: We will ask the Court to adjourn until to-morrow morning, to give us time to arrange the order of testimony for the defense.

The COURT: I will adjourn until 9.30 to-morrow morning.

THURSDAY MORNING, *May 30th.*

(Court opened at 9.30 a. m.)

Judge STEDMAN: We offer part of the testimony of Mr. Clay Arthur Pierce, taken in St. Louis. In order to make the matter entirely clear, we shall to some extent, read some of the testimony already offered by the other side. It is in the form of a deposition, and we do not care to uselessly consume time, but we desire to read some that is already read and also some of the omitted parts.

(Judge Stedman reads questions and Judge Penn reads answers:)

1574 Q. State your name in full, please.

A. Clay Arthur Pierce.

Q. Your age?

A. Thirty-three.

Q. Your residence?

A. No. 40, Vandeventer Place, St. Louis, Missouri.

Q. Your occupation?

A. President of the Waters Pierce Oil Company.

Q. How long have you been president of the Waters Pierce Oil Company?

A. Since June, 1905.

Q. Since that time you have actively discharged the duties of president of the Company?

A. I have.

Q. And managed and controlled its affairs as far as a president can manage and control?

A. Yes, sir.

Q. Well, what have been your duties as president of the company since your election?

A. I have been the executive head of the company, to manage its business affairs, all details connected therewith, and to take final executive action on all business of any nature pertaining to the Company.

Q. Who did you succeed as president of the Company?

A. Mr. Andrew M. Finlay.

Q. You were employed by the Company before you were made its president, were you?

A. I was first employed by the Company in the spring of 1898, as assistant treasurer.

Q. That was the old firm, Waters Pierce Oil Company?

A. The old firm, the Waters Pierce Oil Company. I was re-employed by the new company as assistant treasurer, organ-
1575 azed in 1900, and continued as assistant treasurer until June, 1905, when I was elected President. Just two months previous to that time, however, I was made acting president, and I occupied that position for two months.

Q. What were your duties as assistant treasurer? What duties did you perform?

A. I performed such duties as would naturally fall to the position of assistant treasurer in the Treasurer's department, and in addition I sat on the executive committee as Secretary of that committee, and a member of the committee from the time of its formation until the committee was disbanded.

Q. When was the executive committee organized?

A. If I remember correctly, it was organized in 1900. I am not sure as to the date.

Q. And it has existed down to what time?

A. Until the fall of 1904, I believe.

Q. What have you had to do since the organization of the executive committee with the fixing of prices at which the company sells its commodities in the State of Texas?

A. Since the organization of the Executive Committee I have been actively one of usually three who have determined or fixed the selling prices in the State of Texas.

Q. Who were the other members of that committee? I mean who were the other parties, not the executive committee, but who were the other parties that acted with you or that you acted with in fixing prices of sales of oil in Texas and other commodities?

A. The entire executive committee while it was in session acted finally upon the fixing of prices of a sub-committee, composed of Andrew M. Finlay, then president, C. P. Ackert, general manager, and myself, as assistant treasurer, examined schedules which
1576 were exhibited to the executive committee for their final approval with our recommendation.

Q. And the prices were fixed in that manner during the continuance of the executive committee?

A. Without exception.

Q. How have they been fixed since that time?

A. During the period that Mr. R. P. Tinsley was vice-president of the company after the disbanding of the executive committee until Mr. Tinsley resigned as vice-president I cannot say from my personal knowledge how the prices were adjusted; I was not present at such times. Since Mr. Tinsley resigned his position——

Q. When was that?

A. The date that his resignation was accepted was June, 1905. Since that date until the formation of the advisory committee which is at present in operation, the prices were adjusted by Mr. Andrew

M. Finlay, vice president, Mr. C. P. Ackert, General Manager, and myself, and the final adjustment of prices has been in my hands. Since the formation of the advisory committee, which was formed in 1906, in the fall of 1906, the prices have been considered by the advisory committee and voted on by the advisory committee and finally adjusted by myself and the president.

Q. Who composed the advisory committee during that time?

A. It was composed of myself, as chairman of the board, Mr. Andrew M. Finlay, vice president, Mr. C. P. Ackert, general manager, and Mr. C. M. Adams, Secretary and Treasurer, and Mr. Harris—I don't recall his initials managing the lubricating department, and Mr. Edward Stanley, Controller of the company, and Mr. Stewart, my private secretary, is the secretary of the committee. He is not, however, a member of it.

Q. And that way you have mentioned is the only way in which prices have been fixed, the selling prices have been fixed by
1577 the company during the time that you have had to do in prices?

Mr. ALLEN: We object to that as leading and suggestive. Direct examination of their own witness.

The COURT: The objection is sustained.

Judge PENN: The defendant excepts.

Q. What other concerns or individuals, if any, have ever had anything to say——

Judge PENN: If the Court please, if you will pardon a suggestion with reference to this question,—this is a deposition of this witness and we believe it to be well settled that whether the question is leading or suggestive goes to the manner and form——

The COURT: Was any objection made to that question at the time?

Mr. ALLEN: No, sir. This is under a different law and it is really taken before a court. We do not care, however.

The COURT: The objection is overruled.

A. Absolutely that has been the final fixing of prices, as I have stated.

Q. What other concern or individuals, if any, have ever had anything to do in respect to the fixing of prices by the company—the selling prices, I mean?

A. I would like to understand that question. Do you mean——

Q. Outside of the company and its officers?

A. To my knowledge, the prices of the company have never been fixed other than as I have stated.

Q. During the time that you have been an officer of the present Waters Pierce Oil Company, has it or not been managed by the officers of the company as an independent concern?

1578 A. To my knowledge, it has been managed entirely and absolutely as an independent concern by the officers of the company only.

Judge STEDMAN: Now skip to page 208, to the words, "by Mr. Johnson."

Q. Mr. Pierce, when was Mr. Andrew M. Finlay made president of the present Waters Pierce Oil Company

A. I can't answer that definitely. I think he was first made president in the year—well, it was either 1899 or 1900, I am not positive of it at all.

Q. Mr. H. C. Pierce was made president of the present company when it was organized on the 29th of May, 1900, was he not?

A. That was my understanding.

Q. Do you recall how long he continued as president?

A. I don't recollect positively. I think he continued for upwards of a year.

Q. And who was vice-president?

A. Mr. Andrew M. Finlay.

Q. And then Andrew M. Finlay succeeded him?

A. He succeeded H. Clay Pierce.

Q. How long did Andrew M. Finlay continue as president of the company?

A. Until June, 1900, when I was elected to that office.

Q. When was Mr. Tinsley made vice-president of the company?

A. I think Mr. Tinsley was elected vice-president of the company in the latter part of the summer of 1903.

Q. 1904, wasn't it?

A. No, I think it was in 1903.

Q. I wish you would refresh your memory on that point.

A. I will do so.

1579 Q. The oils which the Waters Pierce Oil Company got from Corsicana refinery and has been getting in the past, are purchased like the company purchases from any other Standard Oil refinery, are they not?

A. Entirely.

Q. Or from any Standard Oil refinery?

A. Well, they are purchasing the same as the production made in any refinery, whether Standard Oil or not Standard Oil.

Q. And the purchases also go through the same routine as purchases elsewhere, so far as your company is concerned?

A. Entirely the same.

Judge STEDMAN: Now the last question on page 210.

Q. As to the prices, you say you don't know how those prices are fixed?

A. I know less clearly regarding the marine oil prices than any other detail of the business, as to the prices. It is my knowledge, however, as far as it goes, that the prices are fixed by our lubricating department on a minimum which they have for all lubricating oils, plus the profits, which is added thereto, and so far as I know and all that I know definitely enough to so state, the prices are definitely determined in our lubricating department.

Q. But the sales are made to the Standard Oil Company, the same as the company would sell to any other customer?

A. To any other customer.

Judge STEDMAN: Now, over to Mr. C. A. Pierce, recalled, on page 212.

Q. Have you the memoranda that you were to get, before we adjourned?

A. You wanted to know the date that R. P. Tinsley was elected vice-president. That was April 28, 1904. You also wanted
1580 to know the date that he resigned. That was June 22, 1905. You asked the date when Mr. A. M. Finlay was elected president. That was the 18th of February, 1904. He also served until June 22, 1905, as president.

Q. When were you made president,—at that time?

A. Yes, sir.

Q. Do you remember, as a matter of fact, when it was that Mr. Tinsley came to the home office and assumed the duties of vice-president?

A. It was April, 1904.

Q. And when did he leave the home office entirely?

A. He left the home office very nearly the end of April, 1905. It was the last few days.

Q. And he left there for good, finally, before he tendered his resignation as vice-president of the company——

A. Very nearly two months before he tendered his resignation.

Q. Mr. Pierce, from the time that you have been connected with the present Waters Pierce Oil Company, in the different capacities which you have mentioned, what has been Mr. H. C. Pierce's connection with the company?

A. He was president up to February, 1904, and since that date he has been chairman of the Board of Directors.

Q. And what supervision or control has he exercised over the management of the business of the company while you have been connected with it?

A. Such matters as I have found advisable to refer to him for final decision, he has passed upon and advised me, and his decision in the matter has been final, and it was handled in accordance with his ideas entirely.

Q. That has been while you have been vice-president?

A. Yes, sir, while I have been vice-president.

1581 Q. How was it before that?

A. The same procedure was followed by Mr. Andrew M. Finlay, as far as I recall, and in addition, Mr. Pierce received copies of the minutes of the executive committee, and controlled the company through action taken there.

Q. State whether or not during the time you have been with the Waters Pierce Oil Company in the different offices that you have detailed, the Standard Oil Company,—I mean by that the one known as the Standard Oil Company of New Jersey—or any other Standard Oil Company, or the Standard Oil people, have anything to do with the general management of the business and affairs of the company, and the fixing of prices of its commodities?

A. You want a full answer, I presume.

Q. Yes, sir.

A. The Standard Oil Company, as a large stockholder in the company, received currently, from time to time, reports to which a stockholder was entitled. During my connection with the company they have, from time to time, offered suggestions in line with their ideas, as to the way the company should be managed, or in the way prices should be adjusted. Those were merely incidental, from time to time. Where their suggestions met with the management's views, they were sometimes followed. In the majority of cases they were not followed. They had nothing to do directly with the fixing of prices or controlling of the business in any manner, shape nor form.

Q. How was it prior to Mr. Tinsley coming to St. Louis, and subsequent to his departure from St. Louis?

A. Prior to Mr. Tinsley coming to St. Louis, it was as I have stated already. While Mr. Tinsley was there, I was not actively in touch with the management and I don't know. Since Mr. Tinsley left, it has been controlled entirely as stated.

1582 Q. You had nothing to do, as you have stated, with fixing the prices while Mr. Tinsley was here?

A. Nothing whatever, excepting during such period as Mr. Tinsley's stay here as the executive committee was in session, which was in *in* August, if I remember correctly, 1904—about three months. *It* was here in the latter part of April, May, June and July, and I left here on the 31st of July for the east. For those three months I had a great deal to do with the fixing of prices, through my position as a member of the executive committee.

Q. Well, how were the prices, that is the prices of the company fixed, up to the time of the dissolution of the executive committee?

A. By a sub-committee and finally by the executive committee.

Q. You say after that date, and until Mr. Tinsley left here, you don't know how the prices were fixed?

A. I do not.

Q. During that time, you yourself had no voice in the fixing of the prices?

A. None whatever.

Q. From the time the company was organized in 1900 down to the time that Mr. Tinsley came to St. Louis to take the position of vice-president, who was it that directed and carried out the general business policy of the company?

A. Mr. H. C. Pierce.

Q. Through the officers of the company, of course?

A. Through the officers of the company.

Q. Who was it after Mr. Tinsley left here?

A. Mr. H. C. Pierce.

Q. During the time Mr. Tinsley was here as vice-president, Mr. Andrew M. Finlay was the president and executive head of the company?

A. Yes, sir.

1583 Q. Mr. Andrew M. Finlay is a brother-in-law of H. C. Pierce, is he not?

A. Mrs. Pierce was his sister.

Q. Your mother was Andrew M. Finlay's sister?

A. My mother was Andrew M. Finlay's sister, yes, sir.

Q. Now, you speak of reports and information being given to the Standard Oil people. The Standard Oil Company of 26 Broadway, New York. Why were those reports—why was that information given, as you have understood it?

A. I have understood, without knowing, except through the testimony as it was presented through the Missouri case, that the Standard Oil Company owned about two-thirds of the stock of the Waters Pierce Oil Company, and as such owners I have always understood that the Standard Oil Company had the right to ask for such statements as a two-thirds stockholder or a majority stockholder would be entitled to, and for that reason statements were sent to them at their request.

Judge STEDMAN: Now, the next question refers to a letter; I don't see that letter.

Mr. ALLEN: The letter is attached. It is addressed to Mr. Backus, the controller of the company. It is attached to the deposition; it is defendant's Exhibit B.

Q. Have you refreshed your memory in regard to the manner in which deliveries were made by the Waters Pierce Oil Company for marine oils, etc., on account of the Standard Oil Company, and also in connection with contracts similar to the one that existed between the Central Coal & Coke Company and the Standard Oil Company?

A. I have. I recalled this morning, more or less indefinitely, regarding the marine oil prices, because that was a detail merely of the business. In general, they were fixed by the lubricating
1584 department upon instructions from myself. It was sometime back and I don't recall that specifically. I have since looked that up,—I find in December—December 6, 1905, if I recollect correctly, I have a copy of a letter in my book which I wrote the controller's department, fixing the price at which they have been billed.

Q. When was it you wrote that letter?

A. May I refer to the copy?

Q. Yes, to refresh your memory.

A. I think it was December 6, 1905. (After reference to paper.) Yes, it was, that is correct.

Q. Who was the letter addressed to?

A. To the controller at that time of the company.

Q. Have you made search for the original of that copy?

A. I have made search, and we have not yet located it. The time was short, and we made a great many changes in our filing space since this letter was written.

Q. And you found this letter since the adjournment for recess?

A. Yes, in my letter book.

Q. You remember the writing or dictating of that letter?

A. I remember it now. I remembered it in general this morning—that I had dictated a letter fixing the marine oil prices, but I could not recall specifically just when it was.

Q. That is a carbon of the original letter that you dictated, is it?

A. Yes; it was taken from my personal letter book.

Q. Can you refer to that and refresh your memory as to the

manner in which those sales were made, beginning at the date of that letter, and how they have been made since?

Mr. ALLEN (not in this trial, but in record being read): I will agree that that letter may be introduced, the same as the original.

1585 (The letter referred to is marked "Defendant's Exhibit C, F. H. S." and is attached as an exhibit to the deposition of this witness, and it is agreed that it may be used as the original).

DECEMBER 6TH, 1905.

Marine Oil Prices.

Mr. R. B. Backus, Controller.

DEAR SIR: Effective December 1st, 1905, you will please charge the Standard Oil Company Marine Oil Department prices as below for all our deliveries to their customers.

Vacuum No. 1, Larine Engine	36½ cts.	per gallon.
Vacuum Dark Marine Cylinder	44½ cts.	" "
Vacuum Arctic Engine	39½ cts.	" "
Vacuum Colza Burning Oil	49½ cts.	" "
Vacuum Sea Oil	27 cts.	" "
S. and F. Heavy Red Star Engine	36 cts.	" "
Tunnel Bearing Grease	10 cts.	" "
Mineral Seal	Market price to jobbers.	
Refined Oil	Market price to jobbers.	

The above, you understand, supersedes former Vice President R. P. Tinsley's instructions to you of May 5th last.

(Signed) —— ——, *President.*

Q. Now, go on and state, your memory being refreshed, just how the matter is handled, and has been handled, since you wrote that letter?

A. After I wrote that letter?

Q. Yes.

A. The lubricating department received requisitions from time to time from the Standard Oil Company's marine department, to deliver to certain vessels certain marine oils. This was only at Galveston; that is the only point at which we handled marine

1586 oils—Galveston, Texas; they would state when the vessels would be lying at the port and the amount of oil that they would need. Those were vessels that the Standard Oil had contracts for the sale of marine oils to. We would make deliveries there, through our lubricating department, of the oils requested, and bill those oils against the Standard Oil Company, at the prices which I have named in this letter, which I have subsequently adjusted from time to time, the Standard Oil Company paying us in accordance.

Q. Then the matter of the price at which you delivered those oils

is fixed by agreement between you and the Standard Oil Company? That is, you supplied the oil to the Standard Oil Company?

A. Yes, but those prices are not fixed by the agreement; the agreement is that we will supply the oil at the prices which we adjust from time to time here.

Q. You have nothing to do then, the Waters Pierce Oil Company has nothing to do, with the price that the Standard Oil Company charges the vessels?

A. Nothing whatever; we don't even know what price they are charging. That is a matter between the Standard Oil Company and the company that had this contract.

Q. You don't know anything about the terms of the contract as between the Standard Oil Company and the vessel owner?

A. Nothing at all.

Judge STEDMAN: Now, turn to page 221; the testimony of Andrew M. Finlay.

Q. You are vice-president of the Waters Pierce Oil Company?

A. Vice-president of the Waters Pierce Oil Company, yes, sir.

Q. You are Mr. H. C. Pierce's brother-in-law?

A. Yes, sir.

Q. When did you first become associated with Mr. Pierce in the oil business?

1587 A. In 1878.

Q. Was that before or after the former Waters Pierce Oil Company was incorporated? It was incorporated in 1878?

A. It was incorporated in 1878, and I think I came with them the month it was incorporated.

Q. Where were you located first? What was your position?

A. I was manager at Marshall, Texas, in charge of what was known as the Marshall Division at that time.

Q. How long did you continue there?

A. I was there for three years.

Q. Then where did you go?

A. To Mexico.

Q. Old Mexico?

A. City of Mexico.

Q. What was your position there?

A. I went there with a brother, who died in the City of Mexico, and I organized the business of the Waters Pierce Oil Company there.

Q. How long did you remain there?

A. I was there only five months.

Q. Then where did you go?

A. I was called back and placed in charge of what was then called the Coast Division, with headquarters at Galveston, Texas, as manager.

Q. How long did you remain there?

A. Nine years, I think.

Q. In charge of that division?

A. Yes, sir.

Q. And, then, what position were you transferred to?

A. I was called to St. Louis, as superintendent of divisions, all divisions, with headquarters at St. Louis.

Q. When was that?

A. That was twenty years ago this coming June.

1588 Q. That would be 1887?

A. 1887.

Q. How long did you occupy that position?

A. Until I was elected vice-president. I don't recollect the exact date.

Q. Of the old company?

A. Yes, of the old company.

Q. You continued as vice-president of the old company down to the date of its dissolution in May, 1900, with a short——

A. With a short period while I was president, from February, I think, until the dissolution of the old company.

Q. You were made president of the old company in February, and it was dissolved in the following May?

A. Dissolved the following May, yes, sir.

Q. While you were vice-president of the old company, you were general manager, were you not?

A. Yes, sir.

Q. And had charge of the business details of the company?

A. Yes, sir.

Q. Especially the equipment department and the marketing?

A. Yes, construction, as well.

Q. Then when the new company was organized you were made vice-president under Mr. Pierce as president?

A. Yes, sir.

Q. And you continued as vice-president down to February, 1904, when you were made president?

A. Yes, sir.

Q. You continued, then, as president until 1904, when Mr. C. A. Pierce became president, and you were made the vice-president?

A. Yes, sir.

1589 Q. Ever since the organization of the new company you have had direction, and supervising control over the marketing department, have you not?

A. Yes, sir.

Q. You know the different stations or agencies in Texas that were established from time to time by the old company, since its organization?

A. Yes, sir.

Q. I don't want you to detail just how many, or when the new or increased stations were established, but I would like to have you state in a general way, as concisely as you can, the increase in the number of agencies in Texas and the increase in the volume of business, beginning with the time you went to Galveston, as manager of that division.

A. You mean as to the number of stations increased?

Q. Yes, agencies.

A. The growth has been rapid, since I went first to Galveston. It was then comparatively a small division. We have been continu-

ously adding to the equipment and construction and everything in connection with the handling of the business ever since then. There was no stop, it is going on now, just the same as ever.

Q. You have had from time to time and from year to year, to meet the requirements of the new business, established new agencies—bulk stations, and adding tank wagons, and cans and iron barrels, and means of convenient and economical handling of oil?

A. Yes, sir.

Q. How many tank cars did the company own or operate when you first became division manager at Galveston?

A. About fifty.

Q. Has that number increased?

A. It has increased, now.

1590 Q. How was the increase; was it all done gradually?

A. It has been gradual.

Q. From year to year?

A. From year to year.

Q. How many tank cars does the company own and operate at this time?

A. We own and operate in the neighborhood of four hundred.

Q. Is that altogether in the United States territory?

A. Yes, the United States and Mexico together.

Q. How many does it own and operate in Mexico?

A. Seventy-five to a hundred.

Q. It owns and operates in its United States territory about three hundred tank cars?

A. Yes, sir.

Q. And they are in constant use?

A. Yes, sir.

Q. Used in Texas?

A. Yes, sir.

Q. More than any other State, are they not?

A. Yes, sir.

Q. What per cent. of the refined oil and gasoline sold by the Waters Pierce Oil Company is shipped in the tank cars?

A. I should say eighty per cent., or possibly eighty-five.

Q. Have you any idea of the number of tank stations in Texas at the time you went to Galveston as manager of that division?

A. If you will give me a little time to think of it, I will figure it out for you. I think there were not more than ten; I know I could count them on my fingers' ends.

Q. Do you remember the capacity—can you state approximately the capacity of the tanks at that time?

A. Fifteen hundred to two thousand barrels altogether.

1591 Q. Has that increased since?

A. Tremendously.

Q. Has that increased in a sudden or a gradual way?

A. Gradually; some years larger than others.

Q. How many tank or bulk stations have you in the State of Texas now?

A. I suppose a hundred and fifty.

Q. You know the capacity of those stations, or would that be merely a guess.

A. It would be merely guesswork, because a tank station may be from one to ten tanks, whereas in the early days if we had one tank, that was all.

Q. Well, the increase in tank wagons and cans for deliveries, etc., has been about the same ratio as the increase in tankage, and the number of stations?

A. Yes, sir.

Q. Now, Mr. Finlay, since the organization of the present company who has managed and controlled the business and affairs of the company, in an executive way, I mean?

A. Mr. Pierce.

Q. H. C. Pierce?

A. H. C. Pierce.

Q. What have you had to do with it?

A. I have been general manager, and took a very large part in the management under Mr. Pierce,—carrying out his instructions—the details of his instructions.

Q. You had other associate officers in the management?

A. Oh, of course, we had others during that time—doing their part of the work.

Q. I am speaking now of the present company?

A. Yes, sir.

1592 Q. Who has fixed the prices at which the company sold its oil to the trade?

A. We have here in the St. Louis office,—Mr. Ackert and myself, Mr. Pierce and Mr. C. A. Pierce.

Q. Do you remember when Mr. Tinsley came to the home office to assume the duties of vice-president?

A. Perfectly.

Q. Do you remember when he left?

A. Perfectly.

Q. You, during that time, were president of the company, were you not?

A. Yes, sir.

Q. And during that interval who controlled the policy and business of the company, the business policy and affairs?

A. Mr. Tinsley attempted to interfere a good deal, but I was managing, and he was interfering against my objections.

Q. And, during the entire time, endeavored to perform your duties as president?

A. As president, yes, sir.

Q. And to run the company in an independent way?

A. Yes, sir.

Q. Who during that time, fixed the prices at which the company sold its oil to the trade?

A. Mr. Ackert, Mr. Tinsley and myself.

Q. Did any one of you do it, or did you act together?

A. We acted together.

Q. State whether or not the company was even during that time run as an independent concern?

A. It was.
Q. And in what way did Mr. Tinsley interfere or attempt to interfere?
1593 A. He would insist on things being done that I did not think was to the interest of the company, the Waters Pierce Oil Company. He was insisting on discharging old and tried employees and putting in new men, which was not to the interest of the company. He made himself generally disagreeable to me,—so much so that his continual nagging at me broke me down completely and I had to leave for Europe for a trip to be gone three or four months, on a day's notice, by order of my doctor.
Q. That was two months that you were away?
A. I was away from here three months. I sailed on the 4th of March, and returned to St. Louis about the first part of June.
Q. Who was general manager during that time, if you know?
A. Mr. Tinsley was the vice-president; Mr. Ackert was general manager.
Q. He remained as general manager?
A. He remained as general manager while I was away.
Q. What is Mr. Ackert's relation to Mr. H. C. Pierce?
A. Cousin.
Q. Who is Stephen Johnson?
A. A brother-in-law of Mr. Pierce.
Q. He was manager of the lubricating department of the present company, from the time of its organization down to what time?
A. When he was retired recently. Wasn't it the latter part of last year?
Q. He retired on account of age?
A. On account of age, and his health.
Q. He was succeeded by whom?
A. Succeeded by Mr. C. L. Harris.

Judge STEDMAN: Now, on page 259.

Q. Mr. Finlay, when Mr. McNall was first employed by the Waters Pierce Oil Company, he had his office at No. 26 Broad-
1594 way, New York City, did he?
A. Yes, sir.
Q. Established his office there?
A. Yes, sir.
Q. All communications were addressed to him at that number?
A. Yes, sir.
Q. Do you know when the change was made from 26 Broadway to 75 New Street?
A. I don't recollect the date.
Q. In 1904, was it?
A. I think it was about that time.
Q. Did you or the company have anything to do with the change, or know anything about it?
A. No, except a request from Mr. McNall to address all mail to him in the future to 75 New Street.
Q. Don't you recollect, Mr. Finlay, when you received that letter

from Mr. McNall that you referred that to the general counsel of the company, who advised against any such change being made?

A. I remember that.

Q. You advised Mr. McNall of the decision of the general counsel of the company, did you not?

A. Yes, sir.

Q. Notwithstanding, Mr. McNall insisted on having his mail addressed to that number?

A. Yes, sir.

Judge STEDMAN: Now, page 262.

Q. You know while you were president of the present company, that the books and accounts of the Company were audited from time to time by auditors sent here by Mr. Wade Hampton, of New York?

A. Yes, sir.

1595 Judge STEDMAN: We offer the deposition of S. K. WHEELER, page 162.

Q. What is your age?

A. Forty.

Q. What is your occupation?

A. Assistant general manager of the Waters Pierce Oil Company.

Q. Who is the general manager at this time?

A. C. P. Ackert.

Q. Where were you first employed by the Waters Pierce Oil Company, and in what capacity?

A. In May, 1902, in charge of the fuel oil business at Beaumont.

Q. How long were you in that employment?

A. One, year, until May, 1903.

Q. You severed your connection at that time with the company?

A. Yes, sir.

Q. Then, when were you again employed?

A. In November, 1903.

Q. In what capacity?

A. As a general representative of the home office.

Q. Have you continued in that employment down to the present time?

A. Well, I continued in that employment until June, 1905; since June, 1905, to date I have been assistant general manager.

Q. From November, 1903, until June, 1905, what were your duties?

A. I visited the more important agencies in Texas.

Q. You visited the more important agencies in Texas?

A. Yes, sir, in Texas, and looked into the local conditions, and made such improvements as conditions seemed to justify.

Q. In the plants?

A. Yes, sir, in the plants and methods of doing business.

Q. In the work of the agents?

A. Yes, sir.

1596 Q. Do you recall now how often that occurred?

A. During the time that I was president?

Q. Yes, since the organization of the new company?
A. It would be, I guess, four or five times, possibly may be less.
Q. They did not come here oftener than once a year, or eighteen months, or two years, did they?
A. No, sir, I think more likely a year and a half or two years.
Q. And they made a general audit of all the books and accounts of the company covering the period beginning at the date of their last audit and running up to the date of the audit that you were making currently?
A. Yes sir.
Q. That was not done at the instance of the Waters Pierce Oil Company?
A. Never.
Q. Why did you concede to him the right and privilege to do that, Mr. Finlay, as president of the company?
A. They came, if I remember, with a letter from Mr. McNall.
Q. It was done for the information of the majority of the stockholders?
A. Certainly.
Q. It had no relation to the management or control of the business of the Waters Pierce Oil Company, had it?
A. None whatever.
Q. Well, what relation had it to the management and control of the Waters Pierce Oil Company, or to the Standard Oil Company or the Standard Oil people?
A. It had no relation to the management; it simply showed that the books and accounts were in a proper condition and correct.
Q. For the information of whom?
A. For the information of the majority of the stockholders in New York.

1597 Q. And since you were transferred to the home office here, what have been your duties?

A. A general oversight, under Mr. Ackert, of the marketing of all our products.
Q. In Texas?
A. In Texas.
Q. Also in the other divisions in which the company does business?
A. Yes, sir.
Q. You know the general organization of the company's business, do you not?
A. Yes, sir.
Q. In these divisions?
A. Yes, sir.
Q. State what it is, briefly.
A. The chief of division is known as manager.
Q. Well, it is divided, there are territorial limits in which the company does business, divided into what is called divisions?
A. Yes, sir.
Q. There is the Missouri division and the Arkansas divisions?

A. Yes, East Texas, Louisiana, Oklahoma, Central Texas, and South Texas division.

Q. And the Republic of Mexico is a division by itself?

A. Yes, sir.

Q. What comprises the East Texas division?

A. The East Texas division comprises a portion of the State of Louisiana and the northeastern portion of the State of Texas.

Q. Where are the headquarters of that division?

A. At Shreveport, Louisiana.

Q. Who is the division manager?

A. J. H. Littlefield.

1598 Q. Where was the division headquarters prior to this transfer to Shreveport?

A. Marshall, Texas.

Q. When was the change made?

A. In June, 1906.

Q. What comprises the South Texas Division?

A. The South Texas division takes in the southern part of Texas.

Q. Where are the headquarters?

A. At Houston.

Q. Who is division manager?

A. Louis Fries.

Q. What comprises the Central Texas division?

A. The Central Texas division comprises the central and northern portion, the portion of the western part of the State.

Q. Who is the division manager of that?

A. W. C. Cahoon, at Dallas, Texas.

Q. What is the Oklahoma division?

A. The Oklahoma division comprises Oklahoma and Indian Territory and some little part of the Panhandle of Texas.

Q. Where are the division headquarters?

A. Oklahoma City.

Q. Who is the division manager?

A. A. P. Ebie.

Q. The division headquarters used to be at Denison?

A. Yes, sir.

Q. When was it transferred to Oklahoma City?

A. I think it was in June in 1905.

Q. Do you know why the transfer was made?

A. Well, to locate their headquarters more centrally.

Q. That is the business in Oklahoma north of Denison had increased to such an extent that it was a good business policy

1599 to locate the headquarters at Oklahoma City?

A. Yes, sir.

Q. Did you state who the division manager was?

A. Yes, sir, Mr. Ebie.

Q. Now, the company has a large number of agencies in each of these several divisions of Texas that you have spoken of, have they not?

A. Yes, sir.

Q. To whom do the agents report? Under whose direction or

supervision do they carry on the company's business at the different agencies?

A. They report to the division manager and work under his instructions.

Q. That is to the division manager——?

A. In the division in which they are located.

Q. Under whose supervision or direction do the division managers work and operate? To whom do they report?

A. They report to the general manager. Work under his direction.

Q. The general manager is located at the home office of the company in St. Louis?

A. Yes, sir.

Q. How long has the organization you speak of continued, to your knowledge? That was the case when you went into the company first, wasn't it?

A. Yes, sir, that was the same organization.

Q. You have visited in your employment, in the employment of the company, the agencies, have you not?

A. No. Well, most of the important agencies.

Q. Your agencies consist of what is known to the company as the tank wagon stations, tank can agencies and commission agencies, do they not?

1600 A. Yes, in order to divide the agencies into different headings of salaries and commission; that depends upon the manner in which the agents are paid. We subdivide the agencies into two headings, being bulk agencies where oil is delivered in bulk, and others.

Q. What do you mean by bulk agencies,—oil delivered in bulk?

A. Bulk agencies are where they maintain teams and tank wagons or can wagons, and deliver the oil in bulk to the merchants.

Q. That is, you have storage tanks, large storage tanks in which the oil is delivered from the tanks, cars, and is distributed from those agencies to the customers of the company through the tank wagons and cans?

A. Yes, sir.

Q. Do you know or can you state from recollection the number of agencies in the State of Texas that the company has?

A. It has about 216 agencies.

Q. Practically the company has agencies of one kind or another all over the country—in every county and town of any consequence, in the State of Texas?

A. Yes, sir.

Q. How many bulk agencies are there at which the company has storage tanks in which it handles the oil in bulk?

A. One hundred and ninety-two, I believe.

Q. Can you mention the particular ones?

A. Dallas, Sherman, Denison, Gainesville, Fort Worth, Waco, Houston, Galveston, Beaumont, San Antonio, Austin, El Paso, Eagle Pass, Laredo, Brownsville, Corpus Christi, Bryan, Mineral Wells, Jacksonville, Bluffton, San Angelo, Brownwood, Calvert, Marshall,

Rutherford, Seymour, Wichita Falls, Amarillo, Belton, Temple, San Augustine, Huntsville, Palestine, and others.

Q. And others?

A. Yes, sir.

1601 Q. Now, the particular commodity dealt in by the company and handled at these bulk agencies in bulk, is refined oil and gasoline?

A. Refined oil and gasoline,—stove gasoline and engine naphtha.

Q. Any others? Do you handle any lubricating oils in bulk in Texas?

A. At some of the agencies, at some of the larger agencies.

Q. Do you handle any fuel oil in bulk?

A. No fuel oil; we handle at the larger agencies lubricating oils and turpentine and linseed oil, in bulk.

Q. How are the oils that you mention shipped to those bulk agencies or stations?

A. They are shipped in tank cars and unloaded into storage tanks.

Q. Your company has storage tanks for unloading it in that way, at all of the bulk stations you have mentioned or which you have enumerated, and others, in addition?

A. Well, we do not carry lubricating oil, linseed oil or turpentine in a great many, but the majority.

Q. Well, take refined oils, gasoline and engine naphtha. How are the illuminating oils and gasoline distributed from those bulk stations to the retail trade—to the customers of the company? Just give the details in a general way.

A. To the local merchants and nearby towns, the deliveries are made in either tank wagons or can wagons, and the merchant is delivered whatever quantity that he wants, whether large or small,——

Q. What do you mean by a tank wagon?

A. A tank wagon is a tank, a steel tank.

Q. But on wheels, mounted on wheels?

A. Mounted on wheels, which has compartments to hold refined oil and gasoline.

Q. All of them have separate compartments for that?

A. They have separate compartments for each, yes, sir.

1602 Q. Some of them you use for gasoline alone? That is, some have not the compartment, have they? Some of them have two compartments, and some have three. All the compartments are used for either refined oil or gasoline, as the trade requires?

A. Yes, sir.

Q. These wagons you move around with horses?

A. Yes, sir.

Q. The wagon is pulled direct from the storage tank with oil or gasoline to be delivered to the customer directly into the tanks?

A. Yes, sir.

Q. It is driven to the customer's place of business, and it has convenient facilities for drawing the oil from the tanks—what are the facilities, buckets?

A. Five gallon buckets.

Q. In that way are the deliveries made to the customer?

A. The driver carries the buckets to the storage tanks of the customers and empties them in.

Q. And the customer, as a rule, is supplied with what you call storage tanks?

A. Yes, sir.

Q. What are the capacities of those tanks?

A. Usually about sixty gallons.

Q. Those are located in the stores of the retail dealers, are they?

A. Yes, sir.

Q. The driver drives up to the store and finds out what the customer wants and takes the order and fills the order by drawing the fluid from the tanks, or from the wagon, into the bucket?

A. Yes, sir.

Q. Carrying the bucket into the store, he dumps it into the store tank?

1603 A. Yes, sir.

Q. Now, those store tanks are kept in a way so that the retail dealer can readily draw out, can conveniently draw out whatever quantity the customer may want?

A. Yes, sir.

Q. So that the oil passes from the refinery—that is, the oil handled by the company—passes from the refinery to a car tank, and from the car tank to the bulk station of the Waters Pierce Oil Company in Texas, and is transferred from the car tank into one of the bulk tanks of the company, stationed at Texas, and transferred from there into the tank wagon and taken from there to the purchaser's store,—it is transferred from the tank wagon by the buckets, into the customer's store tank and then the retail dealer or customer draws from that same tank into the vessel or receptacle of the purchaser,—consumer?

A. Yes, sir.

Q. It is all handled in bulk?

A. Yes, sir.

Q. What percentage of the oil and gasoline sold by the Waters Pierce Oil Company in Texas are handled in that way?

A. I should say about seventy per cent.

Q. Now, has the company any other means or facilities in Texas for handling oils and gasoline in bulk? You have cans, I suppose.

A. Yes, we have ten gallon cans.

Q. How are they handled?

A. Wagons with a specially prepared bed used, which usually hold 30 ten-gallon cans; those are used for deliveries of this kind.

Q. Those cans are made like milk cans, are they not?

A. Yes, sir.

Q. Are they filled from the storage tank, and the driver empties then directly into the merchants' store tank?

1604 A. Yes, sir.

Q. He drives to the customer, retail dealer and transfers the contents of the can into the retail dealer's store tank?

A. Yes, sir.

Q. Are those cans used by the company at the stations where tank wagons are used?

A. Yes, sir.

Q. Are they used also at the stations where the company has no tank wagons?

A. Yes, sir.

Q. What area has any one agency to those tank wagons or those can deliveries cover? That is, deliveries are not made alone in the town in which the company is located, are they?

A. No, they go to points fifteen and twenty miles from the agencies.

Q. That is, they circle around the agencies fifteen or twenty miles?

A. Yes, sir.

Q. And deliveries by tank wagons and cans are made in that way?

A. Yes, sir.

Q. Now, is it not a fact that practically the company covers the entire area of Texas by deliveries of that character?

A. Yes,—well I don't know as I can make it quite as broad as that.

Q. Well, the thickly settled district?

A. The thickly settled district, yes, sir. That is so, yes, sir.

Q. Wherever the population is dense enough to justify deliveries in that way?

A. Yes, sir.

Q. Now, how is the business done at agencies and stations in the State in which you had no bulk tank, no facilities to make
1605 bulk deliveries beyond the reach of deliveries from the bulk station?

A. Those agencies are supplied with oil and gasoline in iron barrels shipped from the nearest and most economical agency close by?

Q. That is, in iron barrels?

A. Yes, sir.

Q. That is, you have agencies at that point, or warehouse, or place for keeping the stuff in iron barrels?

A. Yes, sir.

Q. And you keep the stock of oils and gasoline in the iron barrels at such stations for delivery?

A. Yes, sir.

Q. And those iron barrels are shipped to such stations from time to time from the most convenient and adjacent bulk stations?

A. Yes, sir.

Q. They are billed at the bulk station and shipped in that way?

A. Yes, sir.

Q. How are the deliveries made to the retail trade, in iron barrels?

A. Our agent has an iron barrel which is drayed to the merchant's place of business, and it is unloaded wherever he designates.

Q. How is the contents of that barrel handled, by the retail merchant?

A. In some instances the merchant will use the barrel for storage purposes.

Q. He draws from that?

A. He draws from the iron barrel. In other instances, where he has store tanks, it is emptied from the iron barrel direct into the store tank.

Q. That is, where the tank—these iron barrels all belong to the company, and are returned by the purchaser when they are emptied?

1606 A. Yes, sir.

Q. Is there any other way in which the company handles and distributes its oils and gasoline in Texas? Do you use wooden barrels, or cans, or cases?

A. Yes, deliveries are made in wooden barrels also, and in cases, holding two five-gallon cans.

Q. At what stations, what kind of stations are deliveries generally made in wooden barrels and five-gallon cans?

A. Well, the demand for the oil in five-gallon cans is restricted pretty well to the western part of the State. In the more thickly populated parts of Texas they take their oils there in bulk, either that way or iron barrels.

Q. This other goes to localities where the population is not dense or large enough to justify sending in larger quantities, and the distances are so great as not to justify the deliveries in bulk through tank wagons or cans, or the iron barrels, is that the case?

A. Yes, sir.

Q. And in these different ways you practically reach every locality in the State of Texas?

A. Yes, sir.

Q. Making sales and deliveries of oil in one way and another, as you have indicated?

A. Yes, sir.

Q. In those localities?

A. Yes, sir.

Q. Was that the method and system of doing business by the company when you were employed by it?

A. Yes, sir.

Q. In the general manager's department?

A. Yes, sir.

Q. Do you know how many stations or agencies the com-

1607 pany has in Texas, of which it owns its plants in fee?

A. No, sir, I don't.

Q. You don't know the capacity of the tankage in the State either, do you?

A. We have 444 storage tanks, aggregating a capacity of something over five million.

Q. That is 444 storage tanks? Those are distributed all over the State?

A. Yes, sir.

Q. At the bulk stations which you have mentioned, and elsewhere?

A. Yes, sir.

Q. What, if anything, have you had to do with the fixing of prices at which the company has sold oil in Texas, since you went into the general manager's office?

A. The prices are all made by the general manager.

Q. You have had a great deal to do with carrying on the correspondence relative to prices, have you not?

A. Yes, sir.

Q. As assistant to the general manager?

A. Yes, sir.

Q. Is it not a fact that the general manager, or you, representing him, always notified the agents where oils were being sold——?

A. Notified the manager, and the manager notified the agent.

Q. The manager of the division?

A. Yes, sir.

Q. Those matters are handled by directions from the General Manager's office to the managers of the divisions?

A. Yes, sir.

Q. Has anybody else besides the manager, the General Manager, ever dictated or had anything to do with the fixing of prices at which the company sells oil in Texas, while you have been in the general manager's office?

1608 A. No. The price is usually determined by the general manager through consultation with other officials of the company.

Judge STEDMAN: Now, on page 190, last question.

Q. Go on and state then what prices those competitors have sold corresponding quantities of oil at, as compared to the prices at which the same qualities of oil are sold and have been sold by the Waters Pierce Oil Company in Texas?

A. As a general proposition, they sell their oils at the same prices that we do. In cases where they are not able to sell their oils for the same prices that we are asking for ours, they will offer a lower price as an inducement to the trade.

Q. And when they do that, what action has the company been in the habit of taking?

A. Of meeting the prices, if we thought it necessary to do so. In a great many cases the prices are not met.

Q. According to your observations and experience gathered during the time that you have occupied your present position with the company, what is the fact, so far as the obtaining of trade or selling of oil is concerned, or facilities which the company has in Texas for selling the oils, as compared with the facilities which its competitors have?

A. The Waters Pierce Oil Company have very superior facilities, while those of the competitors are very meager.

Q. And what is the fact as to the advantage that the company has in those superior facilities?

A. The advantage is that the Waters Pierce Oil Company is able to supply the oils to the trade in a manner that is very satisfactory to the trade, keeping them supplied at all times with any kinds of oil at any time of the day.

Q. And it supplies its customers promptly?
A. Yes, sir.
1609 Q. And in a clean, convenient way?
A. Yes, sir.

Judge STEDMAN: I believe that is all.

C. W. CAHOON, recalled by defendant, testified as follows:

Direct examination.

(By Mr. ODELL:)

Q. I wish you would look at that sign, Mr. Cahoon. (Counsel holds up a wooden sign before witness and jury.) Are you familiar with that sign, Mr. Cahoon?
A. I have seen it before, yes, sir.
Q. Where?
A. In Dallas.
Q. Who was it used by there?
A. A. M. Clem.
Q. During what time?
A. I don't know the exact date it was placed on his office, but sometime early in 1900, as I recall it.
Q. I wish you would hold it up so the Jury can see it, Mr. Cahoon.

(Witness holds sign up before Jury.)

That is all.

Cross examination.

(By Mr. BATTS:)

Q. When was the first time you saw that on Mr. Clem's office, you say this was on Mr. Clem's office?
A. Yes, sir, on Mr. Clem's office.
1610 Q. When was that?
A. I don't recall when I first saw it.
Q. The office down on the creek?
A. No, the office was in quite an elevated place.
Q. How far from the street railroad?
A. One hundred yards, I should say; possibly two hundred.
Q. One or two hundred yards from the railroad street?
A. The wagons drove up right in front of the office, though.
Q. Company wagons?
A. Company wagons and country wagons; they went to the plant for oil.
Q. You delivered all the oil, didn't you?
A. I had nothing to do with that.
Q. You didn't have anything to do with that?
A. With Mr. Clem's business?
Q. No, you were the manager there at Dallas?
A. Not when this sign was put up first.
Q. You weren't manager then?
A. No, sir.

Q. Well, was it the course of business for deliveries to be made both by Mr. Clem and by the other plant of the Waters Pierce Oil Company?

A. We were making tank wagon deliveries, and I presume he was doing it also.

Q. Wasn't any occasion for anybody to go there with wagons?

A. I don't know; but I had a great many people come there for barrels.

Q. You don't know of any cases——

A. I don't know of any specific case.

Q. That wasn't the ordinary course of business?

A. Yes, sir, great many customers came in from the coun-

1611 try for iron barrels, iron barreled oil.

Q. Is that the ordinary method of putting up signs of the Waters Pierce Oil Company. For instance, "C. W. Cahoon" in big letters; "Agent of the Waters Pierce Oil Company," in little letters?

A. At my office in Dallas, if I remember correctly, the lettering of the Waters Pierce Oil Company and my name are about the same size.

Q. You have got your name on it, then?

A. Yes, sir.

Q. "Waters Pierce Oil Company, A. W. Clem, Agent,—I mean—C. W. Cahoon, Agent"?

A. C. W. Cahoon, Manager, yes, sir.

Q. Now, those signs are made at St. Louis, are they?

A. My sign is painted on the marble slab at the entrance of the office in the hall.

Q. That is the up-town office?

A. Yes, sir.

Q. Now, down at the warehouse,—is it "C. W. Cahoon, Agent for the Waters Pierce Oil Company"?

A. I don't recall a sign on the down-town office.

Q. No sign down there?

A. Not that I recall, no, sir.

Q. This sign was painted in St. Louis, wasn't it?

A. I don't know where it was painted.

Q. You don't know about that. Now, the marble slab you are talking about is the directory in the building, directory of the building?

A. Yes, sir.

Q. Put there by you or by the owners of the building?

A. Put there by the owners of the building.

1612 Q. Now, you say on your warehouse there is no sign at all?

A. At our warehouse there is no sign that I recall.

Q. There is no sign on the warehouse then, with your name on it?

A. No, sir.

Q. I will ask you if it isn't a fact that at the different agencies, that whatever sign is put up is "Waters Pierce Oil Company"?

A. As I recall it, yes, sir.

Q. And that is all?

A. Yes, sir. Over half of the warehouses have signs, however.

Q. Do you know any reason why this sign was sent down there on the creek and put up?

A. I do not, unless it was to indicate to the public that it was the property of the Waters Pierce Oil Company.

Q. Couldn't that have been better accomplished if the larger letters had been used in the "Waters Pierce Oil Company" rather than the "A. W. Clem"?

A. I wouldn't think so, no, sir.

Q. You wouldn't think so? Now, as compared with the words "Waters Pierce Oil Company," what is the difference in the size of the letters and the letters "A. W. Clem"? (Shows sign to witness.)

A. I should say "A. W. Clem" is about twice the size.

Q. About twice the size; and the words, "Agent of the" in still smaller letters than the "Waters Pierce Oil Company"?

A. Yes, sir.

Q. That is the only case you know of where the name of the agent of the Waters Pierce Oil Company is put up on an agency of the company?

A. I don't recall any other instances where local agents——

Q. Don't recall any other instances?

A. No, sir, my name, however, is as I stated, on the slab at the office, and at that time Mr. Clem was in very much the same position I am.

1613 Q. Well, as I understand you, that the name at your office—you are in an office building there?

A. Yes, sir.

Q. And there are a number of other people who have offices there?

A. Yes, sir.

Q. And the owner of the building has caused the name of each one of those persons having an office to be put on a directory?

A. Yes, sir.

Q. And that is the way your name is there?

A. Our sign, however, covers somewhat more space than the others, because we occupy more space in the building.

Q. Because you occupy more space the owner gave you a bigger sign?

A. Yes, sir.

Q. But you had no sign at all painted by the Waters Pierce Oil Company, or through instructions from the Waters Pierce Oil Company, at Dallas?

A. At my up-town office. I said at the warehouse we have a very large sign.

Q. Waters Pierce Oil Company, without mentioning your name?

A. "Waters Pierce Company" and a number of the brands of goods we handle.

Q. Without your name at all?

A. My name doesn't appear on it, no, sir. Sign was painted before I became manager.

Q. Well, was the name of the other manager put on it?

A. The name of the other manager was on the office at the time.

Q. But I am talking about your warehouse?
A. Not that I recall, no, sir.

Redirect examination.

(By Mr. ODELL:)

Q. State whether or not Mr. Clem's warehouse and office
1614 was all together.
A. Just a few feet apart, yes, sir.

LOUIS FRIES, recalled by defendant, testified as follows:

Direct examination.

(By Mr. ODELL:)

Q. Your name is Louis Fries?
A. Yes, sir.
Q. Where do you live, Mr. Fries?
A. In Houston.
Q. Texas?
A. Texas.
Q. How long have you resided in this State?
A. Very nearly fifty-five years.
Q. How old are you, Mr. Fries?
A. Nearly fifty-five years.
Q. In what part of the State were you born and raised?
A. In San Antonio; raised in San Antonio and west of San Antonio.
Q. You are now in the employ of the Waters Pierce Oil Company?
A. I am.
Q. In what business were you engaged prior to the time of entering their employment, Mr. Fries?
A. Well, I was in the gin business in San Antonio; as clerk with Charley Hummel; I was a clerk in the dry goods business; I was bookkeeper and cashier of an oil mill; I was a stockman for about ten years; I farmed for seven years; and I did several other things.
Q. When did you commence working for the Waters Pierce Oil Company?
A. It will be twenty years on the 15th of August of this year.
1615 Q. In what capacity did you first enter their employ?
A. As agent.
Q. At what place?
A. At Laredo, Texas.
Q. How long did you serve in that capacity?
A. About three years; three years and three months.
Q. To what point were you then transferred?
A. San Antonio, Texas.
Q. In what capacity there?
A. As agent, local agent.
Q. Covering what period of time?

A. I was local agent about three years.
Q. In what capacity did you next serve them?
A. As assistant manager.
Q. Where?
A. San Antonio.
Q. For about how long?
A. About one year, about twelve months.
Q. During the twelve months that you have mentioned, Mr. Fries, when you were assistant to the manager, or assistant manager,—twelve months you stated.
A. Yes, sir.
Q. Where was the division headquarters of the company located then?
A. At Galveston.
Q. Well, in what capacity did you next serve them?
A. I was made manager with headquarters at San Antonio.
Q. How long did you serve them in that capacity?
A. I am still with them as manager.
Q. At what point?,
A. Houston, Texas. I was transferred from San Antonio in September, 1903.

1616 Q. Your headquarters were changed, were they?
A. Yes, sir.
Q. Mr. Fries, do you know Roy Campbell?
A. Yes, sir.
Q. How long have you known him?
A. Well, I have known him since he came to Texas. I don't remember exactly how long that is.
Q. Where did he come from?
A. His home is in Ohio
Q. Where did you know him, Mr. Fries?
A. I knew him in San Antonio.
Q. What business was he engaged in there?
A. Well, he went into the oil business; that is where I became acquainted with him; he went in as a retailer of oil.
Q. About when, Mr. Fries?
A. I can only say about.
Q. Well, do the best you can.
A. I think it must have been about '94.
Q. You remember the circumstances of the Waters Pierce Oil Company—the then Waters Pierce Oil Company, buying him out?
A. I remember the company buying him out, yes, sir.
Q. Well, about how long had he been engaged in business when they bought him out?
A. Well, he and a man by the name of Scover were partners for about six months; I think they were in business—or Roy, after he bought him out, was in business about a year or year and a half.
Q. During that time what were your relations with Campbell with reference to being friendly or intimate or otherwise?
A. We were very intimate; I think he was about the most intimate friend I had, Roy Campbell.

1617 Q. Now, at that time, in what capacity were you serving the Waters Pierce Oil Company?

A. As agent.

Q. State whether or not you associated much or little together?

A. Much.

Q. After the company bought him out, Mr. Fries, what did he then do?

A. He operated the retail department at San Antonio for the Waters Pierce Oil Company, under the name of the Texas Oil & Gasoline Company.

Q. Now, do you remember how long he continued to operate that agency for the Waters Pierce Oil Company under that name?

A. March 1, 1904, or about that time.

Q. Do you remember when the former Waters Pierce Oil Company was dissolved, Mr. Fries?

A. Yes, sir, I remember.

Q. Now, about what date was that?

A. May, 1900. Some time between the 20th and 30th, I believe.

Q. You recall what notices—notice was given of the dissolution of the former company and the organization of the present company?

A. I don't remember the wording of it.

Q. Well, as an agent of the company, state whether or not you received any notice.

A. I received notice of the dissolution of the company.

Q. Have you got that notice that you received?

A. I may have it in my files; I am not positive; I haven't my files with me.

Q. You remember who it was received from?

A. The notice of dissolution, I believe, was signed by H. C. Pierce.

Q. Well, in the first place, were you employed by the present company?

1618 A. I was notified of the fact—I was notified of the organizing of the new company and my employment by them, by the new company.

Q. Now, Mr. Fries, would you recognize the copies of the two notices that you received with reference to the former company and the present one?

A. Yes, sir; I don't know whether they would be the ones I received.

Q. Well, look at this one and see whether it is? (Hands witness paper.)

A. Substantially the same.

Q. Notice you received?

A. It is.

Q. (Hands witness another paper.) Well, I will get you to look at this one?

A. Yes, sir.

Mr. ODELL: We now offer these notices, Your Honor.

Mr. BATTS: We have no objection.

Mr. ODELL: I will read to you, gentlemen, the notices identified by this witness:

"Waters Pierce Oil Company.

ST. LOUIS, MO., *May* 29, 1900.

Managers, Agents and Representatives of the Waters Pierce Oil Company:

The Waters Pierce Oil Company, incorporated May 7, 1878, was on the 28th day of May, 1900, by unanimous vote of its stockholders dissolved, and you are hereby respectfully notified that your services will not be required and will cease and terminate upon the afternoon of May 31, next. This company has this day sold and arranged to transfer on May 31, 1900, all of its property to the Waters Pierce Oil Company, incorporated at St. Louis, Missouri, May 29, 1900, and after May 31, 1900, you will hold all of this company's property in your charge subject to the order of H. C. Pierce, president of
1619 the Waters Pierce Oil Company. And in the meantime you will continue making sales and remittances as heretofore, up to the evening of May 31, 1900. On behalf of the stockholders and officers of this company, I desire to thank you for your faithful attention to its interests.

Very truly yours, A. M. FINLAY, *President.*"

"Waters Pierce Oil Company. Incorporated May 29, 1900.
Office of President.

ST. LOUIS, MO., *May* 29, 1900.

Mr. Blank.

DEAR SIR: The Waters Pierce Oil Company, incorporated May 29, 1900, has purchased all of the property of the Waters Pierce Oil Company which was incorporated May 7, 1878, and dissolved by unanimous resolution of its stockholders May 28, 1900. Referring to the notice sent by Andrew M. Finlay, president of that company, you are advised that you are hereby employed by this company in the same capacity as you were employed by the old Waters Pierce Oil Company and at the same salary, and your services on behalf of this company will commence upon the morning of June 1, 1900. As soon as possible you will be advised concerning the details of the conduct of this company's business in your charge.

Yours truly, H. C. PIERCE, *President.*"

Q. Did I understand you to say that you remember approximately the date when Mr. Campbell ceased his connection with the present Waters Pierce Oil Company?

A. March 1, 1904.

MR. ALLEN: Your Honor, I don't know exactly what the habit of the Court is with reference to documents that have been introduced in evidence. Are they marked and filed by the Clerk?

THE COURT: Yes, sir.

MR. BATTS: We should like to have the documents——

1820 MR. ODELL: We would like to have all of the letters and documents that are offered in evidence, turned over.

MR. BATTS: We want the Clerk to have the documents just read.

Mr. ODELL: We would like to have all the letters that have been read, filed with the Clerk.

Mr. ALLEN: They have been filed.

The COURT: Yes, all documentary evidence that has been introduced is in the custody of the Clerk, and the Clerk is the proper custodian.

Q. (Hands witness paper with handwriting on it). I wish you would look at that contract, Mr. Fries. Did you ever see that contract before, Mr. Fries?

A. I don't recall having seen it.

Q. Sir?

A. I don't recall having seen it.

Q. Do you recall at any time seeing what purported to be a duplicate of a copy of the contract made between the Waters Pierce Oil Company and Roy Campbell?

A. Yes, sir, I have seen it.

Q. In whose possession was it at the time?

A. In Roy Campbell's.

Q. Where and under what circumstances did you see that contract?

A. At the request of Mr. Finlay, I called on Roy Campbell.

Q. Where did you see Roy Campbell, Mr. Fries, at the time you saw this contract in his possession?

A. In the Waters Pierce Oil Company's office in San Antonio on Navarro Street.

Q. Under what circumstances, that is to say, did he come to see you, or did you go to see him?

A. I went to see him. You want me to go on?

1621 Q. Yes.

A. I asked him to bring the contract to my office, that I wanted to erase a certain clause or paragraph, second clause, I believe.

Q. Did he do that, Mr. Fries?

A. Yes, he consented to it; if he hadn't consented, I couldn't have done it.

Q. Well, when did he bring the contract to your office?

A. He brought the contract to my office on the 7th of April, 1900.

Q. When was paragraph 2 erased from this Campbell copy of the contract, Mr. Fries?

A. On that date.

Q. State to the jury whether it was with or without his consent.

A. With his consent.

Q. You remember the manner in which it was erased?

A. I do.

Q. Well, I wish you would describe that.

A. The copy was in typewriting and the erasure was made all the way through with the capital "X" which covered all of the small letters in the — line for line; each letter was covered with the capital "X."

Q. Was that made, this capital "X" that you are speaking of, with the typewriter or was it——

A. With the typewriter.

Q. Who made it?
A. I am not positive; I think my stenographer did, in his presence.
Q. Well, now, after this paragraph 2 was erased from the Campbell contract, what became of the contract?
A. It was handed back to Mr. Campbell.
Q. You say that was on April 7, 1900?
A. 1900.
Q. What do you refresh your memory from that enables you to fix the date, Mr. Fries?
1622 A. Well, Mr. Johnson wrote me from St. Louis when Roy Campbell brought suit against the Waters Pierce Oil Company, for me to look up my correspondence, and that was about two years ago, and refresh my memory on some dates, and that was among the letters, a copy.

Mr. BATTS: We have a right to see the data from which the witness refreshes his memory and we shall ask that it be produced or that the testimony be excluded.

Q. (Hands witness letter.) I wish you would look at that letter, Mr. Fries.
A. This is dated April 9, 1900; I said April 7th; my memory wasn't very good.
Q. Now, the letter you received is in Houston, is it?
A. No, sir, I have no letters dated that far back.
Q. Sir?
A. I have no letters dated back to 1900.
Q. Referring to the letter that you received from Mr. Finlay, you know where it is, that that was in reply to?
A. The letter I received, it was destroyed; it was destroyed with a lot of old correspondence and old records when we moved into our present warehouse office building.
Q. I wish you would read that letter to the jury.

Mr. BATTS: Let me see it first, please. (Witness hands letter to counsel for State)
Mr. BATTS: I shall at the proper time ask for all the correspondence from which the witness refreshes his memory.
The COURT: Read the letter to the Jury.
The WITNESS:

"Waters Pierce Oil Company.

SAN ANTONIO, *Texas, April* 9, 1900.

Mr. A. M. Finlay, President, St. Louis, Mo.
1623 DEAR SIR: The instructions as per your favor of April 2nd, personal, have been complied with.
Your- truly, LOUIS FRIES, *Manager.*"

The COURT: What is the date of that letter?
The WITNESS: April 9th.

Q. You know what that letter referred to, Mr. Fries?
A. My letter?

Q. Yes.

A. Referred to Mr. Finlay's letter of instructions to me to call on Mr. Campbell and get his consent to cancel paragraph 2.

Q. Of this contract?

A. Of this contract.

Q. Mr. Fries, where did you say Mr. Campbell's warehouse was located in San Antonio?

A. It was located on the Aransas Pass tracks, west of the city; I don't know the name of the street.

Q. You remember anything about Mr. Campbell receiving a sign at any time?

A. Yes, sir.

Q. When was that?

A. I can't recall the date.

Q. You remember when it was with reference to the dissolution of the old company and the organization of the present company?

A. I believe it was just prior to the dissolution, prior to the change. I am not positive though.

Q. Have you seen this Clem sign?

A. Yes, sir.

Q. When that was exhibited here to the jury?

A. Yes, sir.

Q. A little while ago. I wish you would state to the Jury how the sign that Mr. Campbell received compared to this Clem sign.

1624 A. In size it was about the same, and it was black, gold letters on black ground.

Q. You remember the wording of that sign?

A. No, sir, I do not; it indicated that Roy Campbell or the Texas Oil & Gasoline Company were agents of the Waters Pierce Oil Company; one of the two, I don't remember which.

Q. Did you or not see this sign after it was put up?

A. Yes, sir.

Q. Where was it?

A. It was over Roy Campbell's office door, and afterwards I saw it at his warehouse; I don't know whether there were two separate and distinct signs or one and the same sign transferred; I don't remember that.

Q. Where was his office?

A. On the ground floor of one of the Maverick buildings on Navarro Street.

Q. You remember how long that sign remained on his office door, over the door?

A. No, sir, I do not.

Q. You remember how long the sign remained on the warehouse?

A. I do not know; it may still be there.

Q. Was or not this warehouse located in a public place, Mr. Fries?

A. Well, it was located on the Aransas Pass right-of-way, I believe, and it was on a street corner; it wasn't much of a warehouse; it was an old shack on Mexican *jacal* and he kept his horse-feed in

there and I believe a pump that he used in transferring oils, and his equipment consisted of two tanks out in the yard.

Q. Was there or not a considerable passing to and fro by this warehouse?

A. Not much, no, sir.

1625 Q. Mr. Fries, what capacity were you serving the defendant in at the time that Campbell ceased his San Antonio agency?

A. As manager, South Texas division.

Q. I wish you would state to the jury, Mr. Fries, what his feelings toward the company were at the time that he left the service of the company?

A. The very best; he was seeking employment with the company at the time; he wanted a position in Mexico.

Q. State whether or not he made any complaint of the company having violated any agreement or contract with him, to you as manager of that territory?

A. None at all; none of any kind; in fact, he said that he was glad he had the thing out of the way; that he knew he hadn't done the company or his business justice for a number of years, and he could not do so without sacrificing more in the other direction than his salary would amount to; he was a merchant, broker. During the last five years that he was with the Waters Pierce Oil Company, I don't think he knew what was going on; the business of the company was turned over to a second-rate bookkeeper and a stenographer; the bookkeeper was square and remitted the proceeds of the sales all right, but Campbell never knew what was going on.

Q. What was his habit with reference to being out of the city for a considerable part of the time?

A. Oh, he was gone for months at a time; his business called him out of the city; he handled the cabbage crop at Corpus Christi, which held him down there for three months; he was in the elevator and grain business at Fort Worth until the elevator was destroyed by fire; that kept him out of town for six months; he traveled in Mexico for the Rosenbaum Grain Company, and remained in Mexico for six months of the time; he handled the Cuero onion crop——

1626 Q. Was his salary going on all the time?

A. Yes, sir.

Q. His salary and his office expenses, his office rent?

A. I don't know whether he paid part of the rent or not; anyhow the company paid more than its share, and I believe they paid the stenographer.

Q. When did you first hear of any complaint that he had against the company?

A. I never heard of any complaint against the company; the first complaint that I heard—I don't know whether it was—would call it a complaint or not, but he came back from St. Louis and told me that he had a good notion to bring suit against the Waters Pierce Oil Company for damages. Damages for what? Well, he said, for checking me out, discharging me. What put that into your head at this late date, it was done with your consent? That is all right, he

says, I had a talk with Mr. Gruet, and Mr. Gruet told me that I had good cause for damages and said I was a damn fool if I didn't bring it.

Q. That Gruet, the former secretary of the Company?

A. J. P. Gruet.

Q. Now, if you know, about how long after that was it before he brought the suit against the company?

A. The thing rocked along for some time; he asked me several times how it would affect me personally, that if it would affect me personally he would rather sacrifice this thing and not bring suit. I told him if that was the only thing that stood in his way, to go ahead and crack his whip; that I wouldn't have my personal feelings to stand in the way; to go ahead, if he thought he had cause for action, and he went.

Q. Mr. Fries, have you been familiar with the company's business in Austin since the organization of the present company?

1627 A. Yes, sir.

Q. Has it or not maintained and kept a local agent here all the time?

A. Oh, yes, sir.

Q. Prior to that time, did or not the former Waters Pierce Oil Company have a local agent in Austin, for a period, say, of ten years?

A. Yes, sir.

Cross-examination.

(By Mr. Batts:)

Q. Mr. Campbell hasn't got any feelings against the company, so far as you know?

A. No, not against the company; he has some against some of the officers of the company.

Q. Do you get all of your signs from St. Louis?

A. All my signs?

Q. Yes.

A. No, sir.

Q. Is the company in the habit of sending signs out to Texas to be put up?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. From St. Louis?

A. Yes, sir.

Q. What character of signs?

A. Well, we have a very nice blue enameled sign, white raised lettering on a blue field.

Q. Metal sign?

A. Yes, sir, steel.

1628 Q. Indicating the name of the agent?

A. No, sir.

Q. Just, "Waters Pierce Oil Company"?

A. Yes, sir, and sometimes we have "Eupion oil best on earth" on it, something of that kind.

Q. Down there at Houston, the name is general manager or division manager?

A. No, sir, my name is on my office door—no, it isn't there, it is on the stenographer's door; my office is, "Private".

Q. In an office building there?

A. In the company's office building, yes, sir.

Q. At your tank station, "The Waters Pierce Oil Company, Louis Fries, Agent"?

A. There is no sign.

Q. On your warehouse, "Louis Fries, Agent for the Waters Pierce Oil Company"?

A. No, there is no sign on the warehouse.

Q. No sign at all on your warehouse?

A. No, sir.

Q. Any of your wooden signs sent down from St. Louis?

A. I don't think we have a wooden sign outside of probably Austin; I think I had one painted here about ten years ago.

Q. Did you ever have any sign to be sent from St. Louis except the one to Roy Campbell?

A. I don't even know positively that that was sent from St. Louis.

Q. If that was sent from St. Louis, that is the only one you have heard of being sent from St. Louis?

A. The only wooden sign?

Q. Yes.

A. I couldn't say.

1629 Q. The only other signs are these metallic signs, were made and enameled at St. Louis—at San Antonio, I mean, at the time the sign was sent down?

A. Yes, sir.

Q. Have any correspondence with reference to the sign?

A. The sign, no, sir.

Q. You don't know then, the reason why that particular sign should have been prepared in St. Louis?

A. No, I really don't know, except that I had no direct dealings of any kind with Roy Campbell; he was working under St. Louis, as an independent agency, you might say.

Q. He didn't even refer to you?

A. I checked up their equipment for the company and I bought the equipment for the company, but I never bought anything for Roy Campbell.

Q. Why not?

A. Because he was operating as a separate agency; the only retail agency we had in the territory, in my territory.

Q. He didn't sell to merchants or jobbers?

A. Well, he didn't make a strong effort to sell to them. He had one or two personal friends that bought from him. Before he went to work for the Waters Pierce Oil Company he found it impossible to sell to them, and he quit; went to work for the company and drew his salary.

Q. And the company didn't object to his doing business and drawing his salary?

A. No, they objected and checked him out when it got too bad.

Q. How many years did he work for them?

A. For about ten years.

Q. Well, most of the time giving his attention to other business?

A. Yes, sir, increasing his gallonage, though, his sales.

1630 Q. And was supplying some merchants all the time?

A. Yes, sir, I suppose that he had one or two men that he supplied.

Q. What was the reason for buying him out?

A. I suppose because it was a good investment.

Q. What was the reason for keeping the business up in that name or the name of the Texas Oil Company?

A. That is a very good retail name.

Q. Anything to prevent you from going into the retail business there, if you wanted to, at the other office?

A. Yes.

Q. What?

A. I don't think that St. Louis wanted me to go into the retail business.

Q. That is the reason; they didn't want you to?

A. Yes, sir; if I had had my way about it I would take the whole thing and put it in retail.

Q. And the only reason you know for maintaining Campbell there, was that the St. Louis office wanted it done that way?

A. Yes, sir.

Q. The St. Louis office knew all about the matter?

A. What matter?

Q. The Waters Pierce Oil Company maintaining this separate business over there in the name of the Texas Oil & Fuel Company or Roy Campbell?

A. Yes, sir.

Q. You had no responsibility for it, at all?

A. No, sir, not for Roy Campbell and his doings, no, sir.

Q. Paid him how much?

A. If I had been responsible for Roy Campbell, in spite of personal friendship, I would have checked him out a whole lot earlier.

Q. Now, at the time you brought out Roy Campbell, you

1631 had been running another little concern there in another name, hadn't you?

A. Retail concern?

Q. Retail concern and seller to jobbers?

A. Yes, sir, no, he wasn't selling to jobbers directly.

Q. What was the name of that concern?

A. Consumers Oil & Gasoline Company.

Q. Did you have an agency for selling to retailers when you bought Roy Campbell out?

A. Well, when Roy Compbell went to work for us there was no use in having two.

Q. Did you put up over the Consumers Oil & Gasoline Company, whatever it was, "Agent of the Waters Pierce Oil Company"?

A. I don't think we had any sign on it at all, I don't remember; I know we had a long sign showing what we handled.

Q. Did you disclose to the people that that was a concern of yours?

A. We didn't run around and advertise it; we had that to push our goods. It was known that we had an interest in them; I know it was pretty well known because there was a roast from the retail merchants——

Q. They got to suspecting that fact?

A. Yes, sir, I suppose they knew it.

Q. Now, you stated that you remembered independently of these letters the date upon which you had that conference with Roy Campbell?

A. What conference?

Q. With reference to drawing lines through certain part of the contract.

A. The 7th of April.

Q. I say, do you remember it independently of the letters and data etc., that you have looked at?

A. No, I know it from the copy of the letter which is on file; I have that copy in my office, I believe I have that copy; I know I have it.

1631½ Q. When did you first see the letter?

A. Which, this letter?

Q. Yes.

A. I saw it here; I have the copy of it.

Q. Well, do you remember having seen it before?

A. No, sir.

Q. That was in the possession of counsel here, was it?

A. Which?

Q. That letter.

A. This letter that is here now?

Q. Yes.

A. I saw the Judge take it out of the——

Q. You hadn't seen it prior to that time?

A. No, sir.

Q. You recognized it as the letter you had written?

A. Yes, sir, it is my signature and I recognize the wording.

Q. You say the other letter, the letter you got from Mr. Finlay, is destroyed?

A. Yes, sir.

Q. When did you destroy it?

A. I destroyed it when we moved into our new office building, about a year ago last February.

Q. About the time the suit was instituted?

A. I don't know; I destroyed all of the old correspondence I had; the chief clerk and myself went through the old correspondence, took us a couple of days, and destroyed a number of old stock books and other records we had no further use for.

Q. Did you receive instructions to burn this up?

A. No, sir; Oh, no; we had more of theirs than we could store in the new warehouse.

1632 Q. Didn't you get any personal letters with reference to that matter?

A. No, sir.

Q. This letter you did?

A. This was a personal letter, yes.

Q. A personal letter?

A. Yes, sir.

Q. Not written to you in your capacity down there as agent of the company?

A. Yes, sir, it was addressed to me as manager.

Q. Well, how did it become personal?

A. Well, the personal cover.

Q. What do you mean by that?

A. The usual cover is an envelope, and that was addressed "Personal" "Louis Fries, Manager," and then "Personal" written across the face of it.

Q. And in that you got the information to get the contract with Roy Campbell and mark lines through a certain part of it?

A. Yes, sir.

Q. That was all?

A. Through the second paragraph.

Q. Mark lines through the second paragraph, and that was all the letter?

A. Yes, sir.

Q. You told Roy Campbell you wanted his contract?

A. Yes, sir, I told him I had been requested——

Q. Now, wait a minute; you had been requested to get hold of that contract and mark lines through the second paragraph or clause in that, and that is all that took place between you as to that?

A. Yes, sir, that is all.

1632½ Q. Now, Mr. Fries, talking about signs, I will ask you to state whether or not C. W. Robinson also secured a sign from the company painted in the same way?

A. I don't know C. W. Robinson.

Q. Well, H. P. or H. K. Cochran?

A. I don't know him; I don't how of him.

Q. Well, isn't it a fact that those men were running sham concerns like Clem?

A. I don't know anything about them.

Q. Those facts were not disclosed to you?

A. No, sir, if they are facts, they were not.

Q. Now, down at Houston, the lampstore there, did they get a sign of the same sort from the Waters Pierce Oil Company?

A. I din't know, sir, I wasn't in Houston at that time; I was in San Antonio; that wasn't in my territory.

Q. It is now, isn't it?

A. Yes, sir, it is now.

Q. And is the store now run in the name of the company?

A. No, sir.

Q. The company owns a store there which it runs in somebody else's name?

A. The Lamp Store.
Q. Yes, sir.
A. No, sir.
Q. The Oil & Lamp Store, when did it close out?
A. I think it was January, 1904; shortly after I came there. I went there in September, 1903.
Q. You closed it out?
A. Yes, sir.
Q. It had been theretofore run in the name of what?
A. Texas Lamp & Oil Company.
1633 Q. Belonged to the Waters Pierce Oil Company?
A. Yes, sir.
Q. Did they send them down a sign?
A. I couldn't tell you.
Q. Don't know about that?
A. No, sir.
Q. Same concern at Galveston?
A. Was or is there?
Q. Was or is?
A. There was a Texas Lamp & Oil Company there.
Q. Run by the Waters Pierce Oil Company?
A. Yes, sir.
Q. In another name?
A. Well, it was run as the Texas Lamp & Oil Company.
Q. Don't know about the signs down there?
A. No, sir.
Q. Are there any businesses at this time run by the Waters Pierce Oil Company that you have been informed about, in the name of somebody else, in the State of Texas?
A. No, sir.
Q. If there are businesses of that kind, the fact is kept concealed from you?
A. I don't know it.
Q. Now, about what time did this change of policy take place?
A. What policy?
Q. Policy of running concerns in somebody's else's name in a kind of a sham competition?
A. I don't know anything about that policy.
Q. Those concerns down at Houston and Galveston were discontinued about the time Mr. Tinsley came down from the Standard Oil Company to run the Waters Pierce Oil Company?
1633½ A. Prior to that time.
Q. You remember about when that was?
A. I know about when it was; I met Mr. Tinsley up there at the Fair, and this was before the Fair.
Q. How long did he stay up there at St. Louis, running the——
A. I don't know, I only saw him there on one visit.
Q. Now, Mr. Fries, I notice these letters—this particular letter here is dated April 9, 1900; you have written a letter here that didn't at all indicate what it is about; is it the ordinary course of business

to write letters that didn't at all disclose what the letter is written abou?

A. I think the body of the letter always discloses what it is written about.

Q. This simply refers to a personal letter of a certain date. There is a place up here to name the subject, isn't there?

A. I see there is, yes, sir.

Q. Now, this is the only letter that we have got in regard to this particular transaction, you saying that this is in regard to this particular transaction, and upon the face of it, it don't at all indicate whether it is with reference to it or not?

A. No, sir, it doesn't.

Q. Now, I notice "Waters Pierce Oil Company, San Antonio, Texas," that was the stationery you had been using prior to the re-incorporation, was it not?

A. Yes, sir.

Q. You subsequently got a rubber stamp, "Incorporated under the laws of the State of Missouri" on May sometime—1900—and used that and used the same old stationery with that change?

A. I don't remember that; I know we used a rubber stamp on some stationery; I don't know whether I used it on my letter-heads or not.

1634 Q. And that is the only change made in your business, using a rubber stamp on your stationery?

A. We made a number of changes.

Q. As a result of that re-incorporation?

A. I don't know; there was lots and lots of instructions received from St. Louis.

Q. Well, when?

A. We received them daily.

Q. Well, you had been making changes all along prior to that time?

A. Yes, sir, still making them.

Q. Was the business conducted the same *was* as it had been before?

A. No, sir.

Q. Well, in what respect was it different?

A. I couldn't go into details; the instructions were a little more specific than they used to be, and a good deal of authority was taken away from the agents and managers that they used to have.

Q. When was that?

A. About that time, about the reorganization.

Q. Well, wasn't that about the time Mr. Tinsley came down from——

A. No, sir, prior to his coming.

Q. Now, you had a lot of books in the company's office there at San Antonio?

A. We had a lot of books, yes, sir; all the records.

Q. You closed those up on May 31, 1900?

A. We close them up every month.

Q. Well, I mean did you close them up and put those books aside, and get new books?

A. Not all the way through, no, sir.

Q. Well, did you at all?

A. Yes, sir, we arranged for new ledgers.

Q. On May 31, 1900?

A. No, sir, on June 1st.

1634½ Q. On June 1st, 1900, you transferred the old accounts over to the new ledger?

A. Yes, sir.

Q. And sent out statements?

A. We were paid a good many of the accounts, and the balance we transferred to the new ledger.

Q. And then you sent out notices to them, to the persons with whom you had accounts, and said, "the account owned by you to the Waters Pierce Oil Company has been transferred to us, and we ask that the account be paid to us?"

A. I don't remember sending any such notices.

Q. Did you communicate to your customers that there had been any change at all in the business?

A. No, sir, I don't remember that I did.

Q. You do not?

A. No, sir.

Q. Accounts just went right along, items from day to day, as theretofore?

A. Yes, sir.

Q. Did you get those two notices in the same envelope that were read to you this morning?

A. No, sir, I don't believe I did; I think I got a package by one mail and a package by another.

Q. Don't know which came first?

A. I could mighty near guess it.

Q. You could guess from what you assume to be the course that would be pursued, which you got first?

A. Yes, sir.

Q. And did you get a batch of them and send out to your employees or did they send them out?

A. I sent them out.

1635 Q. They sent you down a batch to send out to your employees?

A. Yes, sir.

Q. Did you get yours from them direct or did you deliver yourself one?

A. Mine was not in the batch; mine was addressed to me as the manager.

Q. Did you get that batch a week or ten days prior to the dissolution?

A. I think I got it about two days. Regular course of mail.

Q. I am talking about this batch you got by express?

A. That is what I am talking about.

Q. And then the other employees were not notified until you were actually doing business as the new Waters Pierce Oil Company?

A. That is about the size of it.

Q. They had been running along there for several days for the new corporation, doing business, corporation having $400,000.00 capital stock, and forty or fifty million capital, for three or four days and didn't know it?

A. I don't know anything about the capital stock, and so forth.

Q. Well, whatever this concern is, they were doing business for it and didn't know it?

A. I don't remember that distinctly.

The COURT: We will adjourn until half past two o'clock.

Court re-opened at 2.30 o'clock.

1635½ Counsel for defendant next introduced in evidence the charge of the Court in the case of the State of Texas *vs.* Waters Pierce Oil Company, *et al.*, Cause No. 12,578, in the District Court of Travis County, Texas.

Judge PENN: If the Court please, it is agreed between the plaintiff and the defendant, that the annual franchise taxes required by the laws of the State of Texas have been paid by the defendant, the Waters Pierce Oil Company for the year 1900, and for each succeeding year up to this time

Mr. BATTS: This agreement is subject to the objection that it is irrelevant and immaterial. That is true is it not? (To Judge Penn). I suppose that if it is not material or relevant, that you could not get it in anyhow, and the objection is urged that it is immaterial.

The COURT: What is the purpose of this evidence?

Judge PENN: The purpose is, Your Honor,—We contend that at the time of the granting of the permit to this company, the State entered into a contract with this company, permitting it to do business in this State for ten years, one of the conditions, of course, being the payment of the annual franchise tax, and we introduce this for the purpose of showing the performance by the defendant of the contract, and the fact that the State has recognized it during these years as a corporation, and permitted it to do business in this State,—recognized the issuance of the new charter.

The COURT: The objection is sustained.

Judge PENN: The defendant excepts.

1636 *Stenographer's Certificate.*

AUSTIN, TEXAS, *July 5th*, 1907.

I, H. P. Bickler, Official Stenographer of the District Court of Travis County, Twenty Sixth Judicial District, hereby certify that the foregoing on pages — 958 is a true and correct report of the testimony introduced and proceedings had upon the trial of cause No.

24,551, of The State of Texas *vs.* Waters Pierce Oil Company, in said Court, May Term, 1907.

H. P. BICKLER,
Official Stenographer, Twenty-sixth Judicial District.

AUSTIN, TEXAS, *July* 16, 1907.

The foregoing transcript of the testimony in the above entitled and numbered cause having been made at the request of the defendant, Waters Pierce Oil Company has been submitted to the Attorneys of record for both parties therein, and said attorneys having made no objection thereto, and said transcript of the testimony having been examined by the Court and found correct, the same is hereby approved and ordered filed as a part of the record in said cause.

V. L. BROOKS,
Judge Twenty-sixth Judicial District.

(Endorsed on cover:) No. 24551. The State of Texas *vs.* Waters Pierce Oil Company. Stenographer's report. Filed July 18th, 1907. D. J. Pickle, Clerk Dist. Court Travis County, Texas. By E. Huppertz, Deputy. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Sep. 10 1907. R. H. Connerly, Clerk. With 4212.

1637 No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

I, D. J. Pickle, Clerk of the District Court in and for the County of Travis and State of Texas, do hereby certify that the within papers contain all original documents to be sent up with the Transcript in cause No. 24551, The State of Texas *vs.* The Waters Pierce Oil Company in accordance with the agreement of parties and order of Court made thereon.

Witness my hand and seal of office at Austin, this the 13th day of August, A. D. 1907.

[SEAL.]

D. J. PICKLE,
Clerk District Court, Travis County, Texas.

No. 21.

The Standard Oil Company.

Know all men by these presents: That we, John D. Rockefeller, Henry M. Flagler, Samuel Andrews and Stephen V. Harkness, of Cleveland, Cuyahoga County, Ohio, and William Rockefeller, of the city, county and state of New York, have associated ourselves together under the provisions of the act of the Legislature of the State of Ohio, entitled an act to provide for the creation and regulation of incorporated companies in the State of Ohio, passed May 1, 1852, and the acts supplementary thereto, passed April 8th, 1856, and the act to amend the last named act, passed February

14th, 1861, and the other laws of the State of Ohio applicable thereto, for the purpose of forming a body corporate for
1638 manufacturing petroleum and dealing in petroleum and its products, under the corporate name of The Standard Oil Company.

And we do certify, that the purpose for which said body corporate is formed, is the manufacture of petroleum, and to deal in petroleum and its products.

That the capital stock necessary for said company, and the amount agreed on as composing the capital stock is the sum of One Million Dollars.

That the amount of each share of capital stock is One Hundred Dollars.

That the name of the place where said manufacturing establishment shall be located for doing business, is Cleveland City, Cuyahoga County, State of Ohio.

That the name and style by which said manufacturing establishment shall be known is, "The Standard Oil Company."

Cleveland, Ohio, January 10th, 1870.

JOHN D. ROCKEFELLER. [SEAL]
HENRY M. FLAGLER. [SEAL]
SAMUEL ANDREWS. [SEAL]
STEPHEN V. HARKNESS. [SEAL]
WILLIAM ROCKEFELLER. [SEAL]

5c I. R. Stamp Cancelled.

THE STATE OF OHIO, *Cuyahoga County, ss:*

At Cleveland, in said county, this 10th day of January, 1870, personally appeared before me the undersigned, a Justice of the Peace in and for said county John D. Rockefeller, Henry M. Flagler, Samuel Andrews, Stephen V. Harkness, and William Rockefeller,
1639 signers and sealers of the foregoing instrument and acknowledged the signing, sealing and execution thereof, to be their free act and deed.

In witness whereof, I have hereunto set my name officially, at Cleveland, in said county, this 10th day of January, A. D. 1870.

FREDK. A. BRAND,
Justice of the Peace.

5c I. R. Stamp cancelled.

THE STATE OF OHIO, *Cuyahoga County, ss:*

I, Frederick S. Smith, Clerk of the Court of Common Pleas, a Court of Record of Cuyahoga County aforesaid, do hereby certify that Fredk. A. Brand, before whom the annexed acknowledgment was taken, was, at its date, a Justice of the Peace in and for said county, duly authorized by the laws of Ohio to take the same, and that I am well acquainted with his handwriting, and believe his signature thereto is genuine.

In testimony whereof, I hereunto subscribe my name

and affix the seal of said court, at Cleveland, this 10th day of January, A. D. 1870.

[SEAL] FREDERICK S. SMITH, Clerk.

5c I. R. Stamp cancelled.

Increase of capital stock to $2,500,000.00

To the Secretary of the State of Ohio:

1640 The undersigned being a majority of the Board of Directors of the Standard Oil Company of Cleveland, Ohio, do hereby certify that on the first day of January, A. D. 1872, at the annual meeting of the stockholders of said company held at its office in Cleveland, Cuyahoga County, Ohio, by a vote then and there taken all the stockholders of said company being present and voting therefor, it was resolved and agreed by all of them that the Capital Stock of said company be increased the sum of One Million Five Hundred Thousand Dollars thereby making the Capital Stock of said Company Two Million Five Hundred Thousand Dollars, which action by the stockholders was as follows, to-wit:

Resolved and it is hereby agreed by each and all of us, that the Capital Stock of this Company, namely, the Standard Oil Company of Cleveland, Ohio, be increased to the sum of Two Million Five Hundred Thousand Dollars, and it is also agreed and the proper officers of this Company are hereby instructed to take the requisite steps to so increase said Capital Stock.

JOHN D. ROCKEFELLER,
O. B. JENNINGS,
B. BREWSTER,
WM. ROCKEFELLER,
S. V. HARKNESS,
H. M. FLAGLER,
S. P. HANDY,
S. ANDREWS,
A. STONE, JR.,
S. WITT,

Stockholders.

CLEVELAND, OHIO, *January 1st*, 1872.

And afterwards said meeting was adjourned.

HENRY M. FLAGLER, *Secretary.*

1641 And we further certify that the whole amount of such increase of Capital Stock has been paid to said Company, in money—that no note, bill, bond, or other security, has been taken for the same, or any part thereof, and that the credit of the Company has not been used directly or indirectly to raise the funds, to pay the same or any part thereof.

In witness whereof we have hereunto set our names at Clevelapd, Ohio, this ninth day of February.

JOHN D. ROCKEFELLER,
HENRY M. FLAGLER,
SAMUEL ANDREWS,
STEPHEN V. HARKNESS,

Directors.

THE STATE OF OHIO, *Cuyahoga County, ss:*

The undersigned John D. Rockefeller, Henry M. Flagler, Samuel Andrews, and Stephen V. Harkness, being duly sworn say they are Directors in The Standard Oil Company of Cleveland, Ohio, that they compose a majority of the said Board of Directors and that all and singular the matters and things set forth in the foregoing certificate are true in substance and in fact.

JOHN D. ROCKEFELLER,
HENRY M. FLAGLER,
SAMUEL ANDREWS,
STEVEN V. HARKNESS,
Directors.

Subscribed by John D. Rockefeller, Henry M. Flagler, Samuel Andrews, and Stephen V. Harkness, in my presence and sworn to by each of them at Cleveland, Ohio, this 9" day of February, A. D. 1872.

[SEAL.] M. R. KEITH,
Notary Public of Cuyahoga County, O.

1642 STATE OF OHIO, *Cuyahoga County, ss:*

I, Frederick S. Smith, Clerk of the Court of Common Pleas, a Court of Record of Cuyahoga County aforesaid, do hereby certify that M. R. Keith before whom the annexed affidavit was taken, was at its date a Notary Public in and for said county, duly authorized by the laws of Ohio to take the same, and that I am well acquainted with his handwriting, and believe his signature thereto is genuine.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at Cleveland, this 9" day of February, 1872.

[SEAL.] FREDERICK S. SMITH, *Clerk.*

Standard Oil Company.

Increase of Capital Stock to $3,500,000.

To the Secretary of the State of Ohio:

The undersigned being a majority of the Board of Directors of the Standard Oil Company of Cleveland, Ohio, do hereby certify that on the tenth day of March, A. D. 1875, at a Special Meeting of the Stockholders of said Company held at its office in Cleveland, Guyahoga County, Ohio, by a vote then and there taken, all the stockholders of said company being present and voting therefor, it was resolved and agreed by each and all of them, that the Capital Stock of said Company be increased the sum of One Million Dollars thereby making the capital stock of said Company Three Million Five Hundred Thousand Dollars, which action of the Stockholders was as follows to-wit:

1643 Resolved, and it is agreed by each and all of us that the Capital Stock of this company, viz—the Standard Oil Company of Cleveland, Ohio, be increased to the sum of Three Million Five Hundred Thousand Dollars—and it also agreed and the proper

officers of this company are hereby instructed to take the requisite steps to so increase said Capital Stock.

J. D. ROCKEFELLER.
S. V. HARKNESS.
H. M. FLAGLER.
S. ANDREWS.
J. D. ROCKEFELLER, *Agent.*
J. D. ROCKEFELLER, *Trustee.*
O. H. PAYNE.
B. BREWSTER,
By J. D. ROCKEFELLER, *His Att'y.*
T. P. HANDY,
By J. D. ROCKEFELLER, *His Att'y.*
O. B. JENNINGS,
By J. D. ROCKEFELLER, *His Att'y.*
WM. ROCKEFELLER,
By J. D. ROCKEFELLER, *His Att'y.*
JOS. STANLEY,
By O. H. PAYNE, *His Att'y.*
A. M. McGREGOR,
By J. D. ROCKEFELLER, *His Att'y.*
W. C. ANDREWS.
A. J. POUCH,
By J. D. ROCKEFELLER, *His Att'y.*
F. A. ARTER,
By J. D. ROCKEFELLER, *His Att'y.*
P. H. WATSON,
By H. M. FLAGLER, *His Att'y.*
I. A. BOSTWICK,
By J. D. ROCKEFELLER, *His Att'y.*
J. HUNTINGTON,
By O. H. PAYNE, *His Att'y.*
D. M. HARKNESS,
By H. M. FLAGLER, *His Att'y.*
JOSIAH MACEY,
By J. D. ROCKEFELLER, *His Att'y.*
W. H. MACEY,
By J. D. ROCKEFELLER, *His Att'y.*
W. T. WARDWELL,
By H. M. FLAGLER, *His Att'y.*
D. P. EELLS,
By J. D. ROCKEFELLER, *His Att'y.*
S. F. BARGER,
By J. D. ROCKEFELLER, *His Att'y.*
W. H. VANDERBILT,
By J. D. ROCKEFELLER, *His Att'y.*
H. W. PAYNE,
1644 By O. H. PAYNE, *His Att'y.*
I. J. VANDEGRIFT,
By O. H. PAYNE, *His Att'y.*
JOHN PITCAIRN, JR.,
By O. H. PAYNE, *His Att'y.*
L. G. HARKNESS,
By H. M. FLAGLER, *His Att'y.*

And afterwards said meeting was duly adjourned.

H. M. FLAGLER, *Secretary.*

Cleveland, Mar. 10, 1875.

And we further certify that the whole amount of such increase of Capital Stock has been paid to said company in money—that no note, bill, bond or other security has been taken for the same or any part thereof, and that the credit of the company has not been used directly or indirectly to raise funds to pay the same or any part thereof.

In witness whereof we hereunto set our names at Cleveland this 10 day of March, A. D. 1875.

JOHN D. ROCKEFELLER.
HENRY M. FLAGLER.
SAMUEL ANDREWS,
OLIVER H. PAYNE.
STEPHEN V. HARKNESS.

THE STATE OF OHIO, *Cuyahoga County, ss:*

The undersigned John D. Rockefeller, Henry M. Flagler, Samuel Andrews, Oliver H. Payne and Stephen V. Harkness being duly sworn say that they are Directors of the Standard Oil Company of Cleveland, Ohio,—that they compose a majority of said Board of Directors and that all and singular the matters and things set forth in the foregoing certificate are true in substance and in fact.

1645

JOHN D. ROCKEFELLER.
HENRY M. FLAGLER.
SAMUEL ANDREWS.
OLIVER H. PAYNE.
STEPHEN V. HARKNESS.

Subscribed by John D. Rockefeller, Henry M. Flagler, Samuel Andrews, Oliver H. Payne and Stephen V. Harkness in my presence and sworn to by each of them before me at Cleveland, Ohio, this 10th day of March, A. D. 1875.

[SEAL.]

M. R. KEITH,
Notary Public for Cuyahoga Co., O.

THE STATE OF OHIO, *Cuyahoga County, ss:*

I, Benjamin S. Cogswell, Clerk of the Court of Common Pleas, a Court of record of Cuyahoga County, aforesaid, do hereby certify that M. R. Keith, before whom the annexed affidavit was taken, was, at its date, a Notary Public in and for said County, duly authorized by the laws of Ohio to take the same, and that I am well acquainted with his handwriting, and believe his signature thereto is genuine.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at Cleveland, this 12th day of March, A. D. 1875.

[SEAL.]

BENJAMIN S. COGSWELL, *Clerk.*

(*Certificate under Section* 906, *Revised Statutes of the United States.*)

UNITED STATES OF AMERICA,
State of Ohio, Office of the Secretary of State:

1646 I, Carmi A. Thompson, Secretary of State of the State of Ohio, and being the officer who, under the constitution and laws of said State, is duly constituted the keeper of the records of articles of incorporations of all companies and incorporated under the laws thereof, and the records of all papers relating to the creation of said incorporated companies, and empowered to authenticate exemplifications of the same, do hereby certify that the annexed instrument is an exemplified copy, carefully compared by me with the original record now in my official custody as Secretary of State, and found to be true and correct of the articles of incorporation of "The Standard Oil Company" filed in this office on the 10th day of January, A. D. 1870, and recorded in Volume 7, page 60; and of the certificate of increase of Capital Stock of said company, filed in this office on the 10th day of February, A. D. 1872, and recorded in Volume 9, page 463; and of the certificate of increase of Capital Stock of said Company, filed in this office on the 13th day of March, A. D. 1875, and recorded in Volume 14, page 500, respectively, of the records of incorporations; that said exemplification is in due form and made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

In testimony whereof I have hereunto attached my official signature and The Great Seal of the State of Ohio, at Columbus, this 14th day of April, A. D. 1907.

[SEAL.] CARMI A. THOMPSON,
Secretary of State.

Endorsed: #24551. State of Texas *vs.* Waters Pierce Oil Co. Filed May 21, 1907. D. J. Pickle, Clerk, by J. A. Belger, Deputy.

1647 No. 17.

(*Certificate under Section* 906, *Revised Statutes of the United States.*)

UNITED STATES OF AMERICA,
State of Missouri, Office of Secretary of State:

I, John E. Swanger, Secretary of State of the State of Missouri, having the custody of the Great Seal of said State, and being the officer who, under the Constitution and Laws of said State, is duly constituted the keeper of the records of articles of incorporation of all companies incorporated under the laws thereof, and the records of all papers relating to the creation of said incorporated companies, and empowered to authenticate exemplifications of the same, do hereby

certify that the annexed instrument is an exemplified copy, carefully compared by me with the original files and records now in my official custody as Secretary of State, and found to be true and correct, of the Articles of Association of the Waters, Pierce Oil Company, filed May 7th, 1878; of Certificate of Incorporation issued to said company, on the date aforesaid; of Statement increasing its Capital Stock to $400,000.00, filed June 20, 1882; and of Certificate increasing its Capital Stock to $400,000.00, issued June 20, 1882, and recorded in the records of incorporations in this office; that said exemplification is in due from and made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

In testimony whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at office in the City of Jefferson, this 6th day of April, A. D. 1907.

JNO. E. SWANGER,

[SEAL.] *Secretary of State.*

1648 *Articles of Association of the Waters, Pierce Oil Company.*

Be it Known that we William H. Waters of St. Louis, Missouri, Henry C. Pierce of St. Louis, Missouri, Horace A. Hutchins of Cleveland, Ohio, Frank D. Carley of Louisville, Kentucky, and William P. Thompson of Parkersburg, West Virginia, do by these presents form a body corporate under the name and style of "Waters Pierce Oil Company" pursuant to and in conformity with chapter 37 article 7 of Wagner's Statutes of Missouri, and the several acts of the General Assembly supplementary and amendatory thereof, and we hereby make the following certificate of facts, in connection with said corporation, pursuant to the provisions of said statutes chapter and acts.

First. The corporate name of the said company is hereby certified to be "Waters, Pierce Oil Company."

Second. The objects for which said company is formed, are dealing in naval stores and dealing in and compounding petroleum and other oils and all the products thereof and buying and selling the same in the State of Missouri and other states.

Third. The Capital Stock of said company is hereby certified to be One Hundred Thousand Dollars, which shall be divided into One Thousand shares of One Hundred dollars each.

Fourth. The number of directors shall be five.

Fifth. The name of the directors who shall manage the affairs of said company during the first year shall be William H. Waters of St. Louis, Missouri, Henry C. Pierce of St. Louis, Missouri, Horace A. Hutchins of Cleveland, Ohio, Frank D. Carley of Louisville, Kentucky, and William P. Thompson of Parkersburg, West Virginia.

Sixth. The name of the place in which the business operations of the company shall or may be carried on is the City of St.
1649 Louis, State of Missouri, where its principal office shall be located.

Seventh. Said Company shall exist the term of fifty years.
Witness our hands and seals this 1st day of May, 1878.

W. H. WATERS. [SEAL.]
H. C. PIERCE. [SEAL.]
H. A. HUTCHINS. [SEAL.]
FRANK D. CARLEY. [SEAL.]
W. P. THOMPSON. [SEAL.]

STATE OF MISSOURI, *City of St. Louis, ss:*

Be it Remembered that on this first day of May, 1878, before me a notary public within and for the city and state aforesaid personally appeared William H. Waters, Henry C. Pierce, Horace A. Hutchins, Frank D. Carley and William P. Thompson who are personally known to me to be the same persons whose names are subscribed to the foregoing certificate as parties thereto, and severally acknowledged that they executed the same for the purposes and uses therein mentioned. Qualified May 18/78 Term Expires May 15, 1882, and I further certify that the word "and" was erased in the name of the above corporation and the words "naval stores and dealing in" were interlined above before signature. Witness my hand & seal notarial the place and date first above written.

[Copy of Seal: James F. Duncan, Notary Public, St. Louis County Mo.]

JAS. F. DUNCAN,
Notary Public.

Filed & Recorded May 1st 1878 at 12:31 P. M.

D. H. MACADAM, *Recorder.*

NOTE.—The words "naval stores and dealing in" on lines 35 & 36 page 300 & "notarial" on line 11 page 301 of this Record are interlined in the original instrument.

1650 STATE OF MISSOURI, *City of St. Louis, ss:*

I, the undersigned Recorder of deeds do hereby certify the foregoing to be a true copy of the Articles of Incorporation of the Waters Pierce Oil Company, together with the acknowledgment &c thereof as fully as the same appears of record in my office in Corporation Book Vol. 1, page 300.

Witness my hand and official seal this 1st day of May, 1878.

[SEAL.] D. H. MACADAM, *Recorder.*

Filed and certificate of corporate existence issued May 7th, 1878.

MICHL. McGRATH,
Secretary of State.

STATE OF MISSOURI:

No. 1309.

Certificate of Corporate Existence.

Whereas, William H. Waters; Henry C. Pierce; Frank D. Carley and others have filed in this office a certificate, in writing, as provided by law, and have in all respects complied with the requirements of the law governing the formation of Private Corporations for Manufacturing and Business purposes.

Now, therefore, I, Michael K. McGrath, Secretary of State of the State of Missouri, in virtue and by authority of law, do hereby certify that said parties, their associates and successors, have become a body politic and corporate, and are duly organized under the name of "Waters, Pierce Oil Company," and have all the rights and privileges granted to Manufacturing and Business Corporations under the laws of this State.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State of Missouri. Done at the City of
1651 Jefferson, this seventh day of May, A. D. eighteen hundred and seventy eight.

[SEAL.] MICHL. K. McGRATH,
Secretary of State.

Statement in the Matter of Increase of the Capital Stock of the Waters Pierce Oil Company.

At a meeting of the stockholders of the Waters Pierce Oil Co. held at the office of the Company No. 600 North 4th St., in the City of St. Louis, State of Missouri at 10 o'clock A. M. on the thirteenth day of June, 1882, pursuant to the notice hereinafter set out there were present in person or by proxy William H. Waters, representing 400 shares, F. D. Carley, representing 200 shares, H. A. Hutchins, representing one share, W. P. Thompson, representing one share, and George H. Vilas, M. R. Keith and George F. Chester, Trustees by proxy representing 398 shares, the same being all the shares of the stock of the Company, and thereupon said meeting organized by the election of Wm. H. Waters, Chairman, and C. M. Adams, Secretary.

There was presented the following affidavit of Wm. H. Waters showing that printed copies of the notice of the calling of this meeting directed to be given by resolution of the Board of Directors the 10th day of April, 1882, were by him deposited in the Post Office at St. Louis, Missouri, on the 11th day of April, 1882, addressed to each of the stockholders of this company at his usual place of residence, postage prepaid, said affidavit is in the words and figures following.

CITY OF ST. LOUIS, *State of Missouri:*

William H. Waters being duly sworn on oath says that on the 11th day of April, 1882, affiant as President of the Waters
1652 Pierce Oil Company, and in pursuance of the order of the Board of Directors thereof, deposited in the Post Office at St. Louis, Missouri, a printed copy of the annexed notice addressed to each of the stockholders of said company at his usual place of residence, postage prepaid. Said notice was signed by a majority of the Directors of said Company and was in the words and figures following:

Stockholders Meeting.—The stockholders of the Waters Pierce Oil Company will take notice that on Tuesday, June 13th, 1882, at 10 o'clock A. M. there will be held at the office of the company No. 600 North Fourth St. in the City of St. Louis, a meeting of said stockholders, for the purpose of increasing the capital stock of the company from the amount of the present capital of one hundred thousand dollars to an aggregate amount of four hundred thousand dollars capital.

WILLIAM H. WATERS, H. C. PIERCE,
W. P. THOMPSON, H. A. HUTCHINS,
Directors of the Waters Pierce Oil Company.

W. H. WATERS.

Subscribed and sworn to before me, this 13th day of June, 1882.
[SEAL.] A. A. PAXTON,
Notary Public.

And there was also presented at said meeting the following proof of publication of said meeting:

STATE OF MISSOURI, *City of St. Louis, ss:*

Personally appeared before the undersigned (a notary public within and for the City of St. Louis) John M. McGuffin, who being duly sworn deposeth and saith that the annexed advertisement was published in the "St. Louis Post Dispatch (printed within the said City and State, the newspaper of which he is one of the publishers) for ten times, the first insertion being on the tenth day of April, and the last insertion being on the twelfth day of June 1882, as follows:

1st time April 10th
1653 2nd time April 17th
3rd time April 24th
4th time May 1st
5th time May 8th
6th time May 15th
7th time May 22nd
8th time May 29th
9th time June 5th
10th time June 12th

Stockholders Meeting.—The stockholders of the Waters Pierce Oil Company will take notice that on Tuesday, June 13th, 1882, at 10 o'clock A. M. there will be held at the office of the company No. 600 North Fourth St., in the City of St. Louis, a meeting of said stockholders, for the purpose of increasing the capital stock of the company from the amount of the present capital of one hundred thousand dollars to the *an* aggregate amount of four hundred thousand dollars capital

W. H. WATERS, H. C. PIERCE,
W. P. THOMPSON, H. A. HUTCHINS,
Directors of the Waters Pierce Oil Company.

JOHN M. McGUFFIN.

Sworn and subscribed before me this 13th day of June, 1882.
[SEAL.] I. G. KAPPNER,
Notary Public, City of St. Louis.

Printers' Fee.....	$21.00
Affidavit	.50
	$21.50

Thereupon on motion it was unanimously resolved that the capital stock of this company be increased from the amount of the present capital of one hundred thousand dollars to an aggregate amount of four hundred thousand dollars capital. And thereupon said addition- stock was subscribed and paid for in cash as follows:

Chess-Carley Co.....	600	shares.....	$60,000.00
Wm. H. Waters.....	1200	"	120,000.00
Trustees of Standard Oil Trust	1200	"	120,000.00
	3000		$300,000.00

1654 And on motion it was further resolved that the Board of Directors of this company cause to be issued to said subscribers certificates for said additional stock so subscribed.

The amount of the original capital stock of the Company $100,000.00 in 1000 shares of $100.00 each has all been paid in. The whole amount of the assets of the corporation is $628,435.22 and the whole amount of the liabilities thereof is $260,745.93. The amount to which the capital stock is increased as aforesaid is $400,000.00 divided into 4000 shares of $100.00 each and has all been paid in.

W. H. WATERS, *Chairman.*

C. M. ADAMS, *Secretary.*

STATE OF MISSOURI, *City of St. Louis, ss:*

William H. Waters being first duly sworn on oath says he is president of the Waters Pierce Oil Company, and a director thereof,

and was chairman of the stockholders' meeting mentioned in the foregoing statement, and that the said statement is true as he verily believes.

W. H. WATERS.

Sworn to and subscribed before me this 19th day of June, A. D. 1882.

CHAPMAN S. CHARLOT,
Notary Public, City of St. Louis.

[Copy of Seal: Chapman S. Charlot, Notary Public, City of St. Louis, Missouri. Term expires June 27, 1885.].

STATE OF MISSOURI, *City of St. Louis, ss:*

Before me Chapman S. Charlot, a notary public within and for the City and State personally appeared William H. Waters who is personally known to be the same person whose name is signed to the foregoing statement, as chairman and acknowledged the said statement to be his voluntary act and deed as such chairman.

1655 CHAPMAN S. CHARLOT,
Notary Public, City of St Louis.

[Copy of Seal: Chapman S. Charlot, Notary Public, City of St. Louis, Missouri. Term expires June 19, 1885.].

Filed and recorded June 19, 1882, a- 2:43 P. M.
C. W. IRWIN, *Recorder.*

STATE OF MISSOURI, *City of St. Louis, ss:*

I, the undersigned Recorder of Deeds certify that the foregoing is a true copy of the certificate of increase of capital stock of the Waters Pierce Oil Company, together with the acknowledgment date of filing and recording thereof as the same remains of record in my office in Book of Corporations Vol. 2, page 397.

Witness my hand and official seal this 19th day of June, 1882.
[SEAL.] C. W. IRWIN, *Recorder.*

Filed and Certificate of Increase of Capital Stock issued June 20, 1882.

MICHL. K. McGRATH,
Secretary of State.

STATE OF MISSOURI,
DEPARTMENT OF STATE.

(1309)

Whereas, on the Twentieth day of June eighteen hundred and eighty two was filed in the office of the Secretary of State, as required by law, a duly certified copy of the statement of the proceedings of a meeting held for the purpose of increasing the capital stock of the Waters Pierce Oil Company a corporation organized and existing under the laws of the State of Missouri, and said

corporation having, in all things, complied with the law made and provided for the increase of capital stock and increasing its capital stock to Four Hundred Thousand Dollars.

Now, therefore, I, Michael K. McGrath, Secretary of State
1656 of the State of Missouri, in virtue and by authority of law, hereby certify that the capital stock of said corporation is increased and that the amount of the capital stock of said Waters Pierce Oil Company is Four Hundred Thousand Dollars.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State of Missouri. Done at the City of Jefferson, this Twentieth day of June, A. D. Eighteen Hundred and Eighty two.

[SEAL.] MICHL. K. McGRATH,
Secretary of State.

Endorsed: No. 24,551. State of Texas *vs.* Waters Pierce Oil Company. Filed May 21, 1907, D. J. Pickle, Clerk, By J. A. Belger, Deputy. Charter 1st W. P. O. Co., (17).

No. 6.

Certificate of Incorporation of the Standard Oil Company of New Jersey.

We, Henry M. Flagler, Thomas C. Bushnell and James McGee, being desirous to form a company under and pursuant to the Act of the Legislature of the State of New Jersey, entitled "An Act concerning corporations" approved April 7, 1875, and the several Acts amendatory thereof and supplemental thereto Do Hereby Certify

1st. The name assumed to designate said company and to be used in its business and dealings shall be "Standard Oil Company of New Jersey."

2nd. The business of such company shall be carried on at Bayonne, Communipaw and other points in the State of New
1657 Jersey, and in the City of New York. The principal part of the business within the State shall be transacted at Bayonne, in the County of Hudson.

3rd. The objects for which said company shall be formed are the refining of petroleum; the manufacturing of various products thereof; the purchasing of the crude material and the sale of the manufactured products thereof; the manufacture of barrels, boxes, cans and other packages in which the manufactured products may be kept or transported; the manufacture and restoration of acids and whatever other substances may be used in the manufacture of the products of petroleum.

4th. The total amount of the capital stock of said company shall be Three Million Dollars, and business shall be begun with the full amount of capital. The capital shall be divided into Thirty Thousand shares of the par value of One Hundred Dollars each. Twenty One Thousand seven hundred and twenty four (21,724) shares shall be issued for the purchase of property necessary for

the business of said company, and at a cash value equal to the par value of the shares so issued.

5th. The following is a list of the names and residences of stockholders, and of the number of shares held by each.

H. M. Flagler of New York City One share.
Baul Babcock Jr. of Jersey City One share.
James McGee of Plainfield, New Jersey, One share.
Thos. C. Bushnell of Morristown, New Jersey, One share.
John D. Rockefeller, of Cleveland Ohio.
Wm. Rockefeller of New York City.
J. A. Bostwick of New York City.
John D. Archbold of New York City.
O. H. Payne of Cleveland, Ohio.
Wm. G. Warden of Philadelphia, Pa.
Benj. Brewster of New York City.
Chas. Pratt of Brooklyn, N. Y.
and H. M. Flagler of New York City.

1658 Trustees of Standard Oil Trust, and twenty nine thousand, nine hundred and ninety six shares, of which twenty one thousand, seven hundred and twenty four shares are issued for property purchased and necessary for the business of this corporation.

6th. The company shall begin business on the 1st day of August, 1882, and shall continue for fifty years.

In Witness Whereof the said parties have hereunto set their hands and seals this first day of August, A. D. 1882.

H. M. FLAGLER. [L. S.]
T. C. BUSHNELL. [L. S.]
JAS. McGEE. [L. S.]

STATE OF NEW YORK, *County of New York, ss:*

Be it remembered that on this first day of August, 1882, before the subscriber, a commissioner for the state of New Jersey for taking the acknowledgment and proof of deeds, personally came Henry M. Flagler, Thos. C. Bushnell, and James McGee, known to me to be the subscribers to the foregoing instrument, and the contents thereof being by me first made known to them severally, they and each of them acknowledged that they signed sealed and delivered the same as their voluntary act and deed, all of which I certify under my hand and official seal.

[SEAL.] JAS. W. HALE,
Com'r for New Jersey in New York, 4 Hanover St.

Endorsed: "Recorded in the Hudson County N. J. Clerk's office August 2, 1882, in Clerk's Record No. 3 page 85 &c. H. K. Van Horn, Clerk."

"Filed August 5, 1882,
HENRY C. KELSEY,
Secretary of State."

Endorsed: State of New Jersey, Department of State, Comparing and — Division. Copy Correct, compared by J. L. Hendricks, Original read by E. H. Weatherby. J. L. Hendricks in charge of Division.

1659 This is to certify that the Standard Oil Company of New Jersey proposes to increase its capital stock by adding thereto Seven Million dollars, divided into Seventy Thouand shares of One Hundred dollars each, making the entire capital stock of the said Company Ten Million dollars, that amount having been determined by the Board of Directors of said Company at a meeting held March 4th, A. D. 1892, to which increase stockholders owning more than two-thirds in value of the existing capital stock of said company have assented.

In witness whereof this certificate is signed by the President of said company, and its corporate seal is hereto affixed and attested by its Secretary on the fifth day of March, A. D. 1892.

PAUL BABCOCK, JR., *Pres't.*

Attest:

L. D. CLARKE, *Secretary.* [CORPORATE SEAL.]

We the subscribers, stockholders owning more than two-thirds in value of the existing capital stock of the Standard Oil Company of New Jersey, do hereby assent to the proposed increase of said capital stock to Ten Million dollars, the amount determined by the Board of Directors of said company at a meeting held March fourth, 1892.

PAUL BABCOCK, JR.,
H. M. FLAGLER,
W. H. TILFORD,
J. D. ROCKEFELLER,
JNO. D. ARCHBOLD,
H. H. ROGERS,
WM. ROCKEFELLER,
O. B. JENNINGS,
J. H. ALEXANDER.
T. C. BUCHNELL.

Trustees of Standard Oil Trust.

STATE OF NEW YORK, *City and County of New York, ss:*

Louis D. Clarke, Secretary of the Standard Oil Company of New Jersey, being first duly sworn says that the foregoing signatures are the true signatures of the parties therein named, and that the said parties own more than two-thirds of the capital stock of the Standard Oil Company of New Jersey.

L. D. CLARKE.

1660 Sworn and subscribed before me this eighth day of March, 1892.

[SEAL.] JAS. W. HALE,

Com'r for New Jersey in New York, 4 Hanover Street.

Endorsed: "Filed March 19, 1898. Henry C. Kelsey, Secretary of State."

Endorsed: State of New Jersey. Department of State. Comparing and — Division. Copy Correct. Compared by J. L. Hendricks. Original Read by Dolton. Hendricks in charge of Division.

Certificate of Change of Name of Standard Oil Company of New Jersey to Standard Oil Company.

The Directors of the Standard Oil Company hereby certify: That a meeting of the Directors of the said company was called for the purpose of changing its name and was held at the office of said company on the Seventeenth day of March, A. D. 1892, at which meeting all of said Directors voted to change the name of said Company, and they further certify.

I. That the name of such corporation in use immediately preceding the said vote and making and filing this certificate was Standard Oil Company of New Jersey.

II. That the name assumed to designate such corporation and to be used in its business and dealings in the place and stead of that referred to in the last preceding paragraph is Standard Oil Company.

PAUL BABCOCK, JR.
J. H. ALEXANDER.
T. C. BUCHNELL.

STATE OF NEW YORK, *City and County of New York, ss:*

Before me, a notary public in and for said City and County, personally appeared L. D. Clarke to me personally known, who being duly sworn saith he is Secretary of the Standard Oil Com-
1661 pany above referred to; and that the foregoing certificate is made by the authority of the Board of Directors of said corporation, as expressed by a two-thirds vote of the members of such Board at a special meeting called for that purpose.

L. D. CLARKE.

Sworn and subscribed before me this 18th day of March, A. D. 1892.

[SEAL.] JAS. W. HALE,
Public Notary, 4 Hanover Street.

STATE OF NEW YORK, *City and County of New York, ss:*

I, William J. McKenna, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a court of Record, do hereby certify, That Jas. W. Hale before whom the annexed deposition was taken, was, at the time of taking the same, a Notary Public of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State, and for general purposes; that I am well acquainted with the

handwriting of said Notary, and that his signature thereto is genuine, as I verily believe.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said court and county, the 18th day of Mch. 1892.

[SEAL.] WM. J. McKENNA, *Clerk.*

Endorsed: "Received in the Hudson Co., N. J. Clerk's Office Mch. 18th A. D. 1892 and Recorded in Clerk's Record No. 18 on page —. Dennis McLaughlin, Clerk."

"Filed March 19, 1892.

HENRY C. KELSEY,
Secretary of State."

Endorsed: State of New Jersey. Department of State. Comparing and Certifying Division. Copy Correct. Compared by J. L. Hendricks. Original Read by Pycraft. J. L. Hendricks in charge of Division.

Certificate Relative to the Issue of Additional Capital Stock of the Standard Oil Company.

The Standard Oil Company a corporation of the State of New Jersey, hereby certifies:

1. The original authorized capital stock of said Company
1662 was Three Million Dollars ($3,000,000).

2. In accordance with the provisions of Chapter 105 of the Laws of New Jersey of 1889 the Board of Directors determined, on the fifth day of March 1892; that the capital stock of said Company should be increased Seven Million Dollars ($7,000,000), making the total authorized capital stock Ten Million Dollars ($10,000,000) and a certificate thereof, as also the assent of stockholders owning more than two-thirds (⅔) in value of the then existing capital stock was filed in the department of State, on the 19th day of March A. D. 1892.

3. In accordance with the provisions of Chapter 177 of the Laws of New Jersey of 1891 the Board of Directors of said Company, on the 23rd day of March 1892, authorized the issue of Sixty Thousand (60,000) shares of said increased capital stock. The par value of each share being one hundred dollars ($100.00). The total increase Six Million Dollars ($6,000,000). And the total amount of stock issued, including said increase, Nine Million Dollars ($9,000,000).

In Witness Whereof, this certificate is signed by the president of said company, and its corporate seal is hereto affixed, and attested by its Secretary, the Twenty third day of March A. D. eighteen hundred and ninety two.

[SEAL.] PAUL BABCOCK, JR., *President.*

Attest:
L. D. CLARKE, *Secretary.*

Endorsed: "Filed Mar. 25, 1892. Henry C. Kelsey, Secretary of State."

Endorsed: State of New Jersey. Department of State. Comparing and Certifying Division. Copy Correct. Compared by J. L. Hendricks. Original Read by Dolton. J. L. Hendricks in charge of Division.

Certificate of Increase of Directors of Standard Oil Co.

The undersigned, stockholders owning two-thirds in value
1663 of the existing capital stock of the Standard Oil Company, hereby assent to an increase of the number of Directors of said Company, from three, the present number, to nine.

PAUL BABCOCK, JR.,
J. H. ALEXANDER,
T. C. BUSHNELL,
W. H. TILFORD,
JNO. D. ARCHBOLD,
H. H. ROGERS,
O. R. JENNINGS,
WM. ROCKEFELLER,
Trustees of Standard Oil Trust,
By WM. ROCKEFELLER,
Attorney in Fact.

The Standard Oil Company hereby certifies that in accordance with the above assent of its stockholders at a meeting of its Directors, held on the 29th day of March, A. D. 1892, the number of Directors of said Company was increased from three, the present number, to nine.

Witness the corporate seal of said Company, attested by its President and Secretary, this 30th day of March A. D. 1892.

STANDARD OIL CO.,
By PAUL BABCOCK, JR., *Pres't.*

Attest:
L. D. CLARKE, *Secretary.* [CORPORATE SEAL.]

Endorsed: "Filed March 31, 1892. Henry C. Kelsey, Secretary of State."

Endorsed: State of New Jersey. Department of State. Comparing and Certifying Division. Copy Correct. Compared by Lycraft. Original Read by Dolton. Hendricks in charge of Division.

(10¢ Internal Revenue Stamp Cancelled.)

Resolved, That it is advisable to alter the Charter of this Company to read as below stated, and that a meeting of the stockholders be called to meet at the principal office of the Company at Bayonne, New Jersey, on the 14th day of June, 1899, at 11 A. M. to take action thereon, notice of such meeting to be signed by the President and Secretary and given to each stockholder in person or mailed

to his proper post office address at least ten days previous to
1664 the time of meeting as provided by the By-Law.

First. The name of the Corporation is Standard Oil Company.

Second. The location of the principal office in the State of New Jersey is at the Company's Refinery in the City of Bayonne and County of Hudson. The name of the agent therein and in charge thereof and upon whom process against this company may be served, is J. H. Alexander.

Third. The objects for which this company is formed are: To do all kinds of mining, manufacturing and trading business; transporting goods and merchandise by land or water in any manner; to buy, sell, lease, and improve lands; build houses, structures, vessels, cars, wharves, docks and piers; to lay and operate pipe lines; to erect and operate telegraph and telephone lines and lines for conducting electricity; to enter into and carry out contracts of every kind pertaining to its business; to acquire, use, sell and grant licenses under patent rights; to purchase or otherwise acquire, hold, sell, assign and transfer shares of capital stock and bonds or other evidences of indebtedness of corporations, and to exercise all the privileges of ownership including voting upon the stocks so held, to carry on its business and have offices and agencies therefor in all parts of the world, and to hold, purchase, mortgage and convey real estate and personal property outside the State of New Jersey.

Fourth. The total authorized stock of the corporation is One Hundred and Ten Million Dollars, divided into One Million and One Hundred Thousand shares of the par value of One Hundred Dollars each. Of said stock the One Hundred Thousand shares now issued and existing shall be preferred stock, and the increase of One Million shares shall be common stock. Said preferred stock shall entitle the holder thereof to receive out of the net earnings a dividend of and not exceeding one and one-half per centum quarterly before any dividend shall be paid on the common stock. Com-

mon stock may at the discretion of the Company be issued in
1665 exchange for preferred stock, and all preferred stock so received by the Company shall be cancelled. Common stock may also be issued in payment for such property as the Company has authority to purchase. Holders of preferred and of common stocks shall have like voting power.

Fifth. The names and post office addresses of the incorporators and the number of shares subscribed for by each shall remain as set forth in the original certificate of incorporation.

Sixth. The duration of the Corporation shall be unlimited.

Seventh. The corporation may use and apply its surplus earnings, or accumulated profits authorized by law to be reserved, to the purchase or acquisition of property, and to the purchase or acquisition of its own capital stock from time to time, to such extent and in such manner and upon such terms as its Board of Directors shall determine; and neither the property nor the capital stock so purchased or acquired, nor any of its capital stock taken in payment or satisfaction of any debt due to the corporation,

shall be regarded as profits for the purpose of declaration or payment of dividends, unless otherwise determined by a majority of the Board of Directors, or a majority of the stockholders.

The Corporation, in its by-laws, may prescribe the number necessary to constitute a quorum of the Board of Directors which may be less than a majority of the whole number.

The number of Directors at any time may be increased or diminished by vote of the Board of Directors, and in case of any such increase the Board of Directors shall have power to elect such additional directors, to hold office until the next meeting of stockholders, or until their successors shall be elected.

The Board of Directors shall have power to make, alter, amend and rescind the By-laws of the corporation, to fix the amount to be reserved as working capital, to authorize and to cause to be executed mortgages and liens upon the real and personal property of the corporation; and from time to time to sell, assign, transfer
1666 or otherwise dispose of any or all of the property of the corporation, but no such sale of all of the property shall be made except pursuant to the votes of at least two-thirds of the Board of Directors.

The Board of Directors, by resolution passed by a majority of the Whole Board, may designate three or more Directors to constitute an Executive Committee, which committeee, to the extent provided in said resolution or in the By-laws of the corporation, shall have, and may exercise, the power of the Board of Directors in the management of the business and affairs of the corporation, and shall have power to authorize the seal of the corporation to be affixed to all papers which may require it.

The Board of Directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the Board of Directors, or by a resolution of the stockholders.

The Board of Directors shall have power to hold its meetings, to have one or more offices, and to keep the books of the corporation (except the stock and transfer books) outside of the State, at such places as may be from time to time designated by them.

I certify that the above resolution was adopted by the Board of Directors of the Standard Oil Company, at a meeting held on the 26th day of May A. D. 1899, a majority of Directors being present and voting in favor thereof. Witness the seal of said corporation.

[CORPORATE SEAL.] L. D. CLARKE, *Secretary.*

Standard Oil Company.

You are hereby notified that the Board of Directors of said company have passed a resolution declaring that it is advisable
1667 to change the charter of said company in several respects fully set forth in said resolution, and have called a meeting

of the stockholders to take action thereon, which meeting will be held at the principal office of the Company in Bayonne, New Jersey, on Wednesday the 14th day of June, A. D. 1899, at eleven o'clock A. M. where you are requested to attend in person or by proxy. If unable to attend please sign and return the enclosed proxy.

H. M. FLAGLER, *President.*
L. D. CLARKE, *Secretary.*

I certify that a notice of which the foregoing is a copy, was served personally or by mail upon each stockholder of the Standard Oil Company, ten days prior to said meeting, said notice being in accordance with the provision of the by-laws of said company. Witness the corporate seal of said corporation.

[CORPORATE SEAL.] L. D. CLARKE, *Secretary.*

The Standard Oil Company, a corporation of the State of New Jersey, doth hereby certify that it has altered and amended its charter to read as above set forth, said alterations and amendments having been declared by resolution of the Board of Directors to be advisable, and having been duly and regularly assented to by a vote of two-thirds in interest of stockholders having voting powers, at a meeting duly called by the Board of Directors for that purpose as above set forth, and written assent of said stockholders is hereto appended.

In witness whereof said corporation has caused this certificate to be signed by its President and Secretary, and its corporate seal to be hereto affixed this 14th day of June, A. D. 1899.

[CORPORATE SEAL.] H. M. FLAGLER, *President.*
L. D. CLARKE, *Secretary.*

STATE OF NEW YORK, *County of New York, ss:*

1668 Be it remembers, that on this 14th day of June, A. D. 1899, before me the subscriber a Notary Public in and for said State & County personally appeared L. D. Clarke the Secretary of the Standard Oil Company, the corporation mentioned in and which executed the foregoing certificate, who being by me duly sworn, on his oath says that he is such secretary, and that the seal affixed to said certificate is the corporate seal of said corporation, the same being well known to him; that H. M. Flagler is president of said corporation, and signed said certificate and affixed said seal thereto, and delivered said certificate by authority of the board of directors and with the assent of at least two-thirds in interest of the stockholders of said corporation having voting powers as and for his voluntary act and deed, and the voluntary act and deed of said corporation, in presents of deponent, who thereupon subscribed his name thereto as witness.

And he further says that the assent thereto appended is signed by at least two-thirds in interest of the sockholders of said corporation having voting powers, either in person or by their several duly constituted attorneys in fact, thereunto duly authorized in writing.

L. D. CLARKE, *Secretary.*

Sworn and subscribed before me this 14th day of June A. D. 1899.

[L. S.] JOHN BENSINGER,
Notary Public for Kings Co.

Certificate filed in New York Co.
(10¢ Internal Revenue Stamp Cancelled.)

STATE OF NEW YORK, *County of New York, ss:*

I, William Schmer, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a court of record, do hereby certify, that John Bensinger has filed in the Clerk's Office of the County of New York, a certified copy of his appointment as Notary Public for the County of Kings with
1669 his autograph signature, and was at the time of taking the annexed deposition, duly authorized to take the same, and that I am well acquainted with the handwriting of said Notary Public, and verily believe that the signature to the annexed certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court and County, the 15th day of June, 1899.

[L. S.] WM. SCHMER, *Clerk.*

We, the subscribers, being over two-thirds in interest of the stockholders of the Standard Oil Company having voting powers, having at a meeting regularly called for the purpose, voted in favor of the alteration and amendment of the charter of said Company, as the same is above set forth, do now, pursuant to the statute, hereby give out written assent to said change.

Witness our hands this 14th day of June A. D. 1899.

Stockholders.	No. of Shares.
John D. Archbold, By Paul Babcock, Att'y,	822 Shares.
Emma B, Auchencloss, By Paul Babcock, Att'y,	243 "
Charles C. Burke, by Paul Babcock, Att'y,	83 "
Fred'k F. Brewster, by Paul Babcock, Att'y,	260 "
E. T. Bedford, By Paul Babcock, Att'y,	257 "
W. H. Beardsley, By Paul Babcock, Att'y,	128 "
Wm. V. Brokaw, By Paul Babcock, Att'y,	411 "
W. E. Bemis, By Paul Babcock, Att'y,	51 "
George B. Bonnell, By Paul Babcock, Att'y,	56 "
Henry H. Bonnell, By Paul Babcock, Att'y,	6 "
James M. Constable, By Paul Babcock, Att'y,	318 "
Charles M. Chapin, By Paul Babcock, Att'y,	102 "
Wm. F. Cochran, By Paul Babcock, Att'y,	51 "
John J. Carter, By Paul Babcock, Att'y,	51 "
E. W. Conley, By Paul Babcock, Att'y,	20 "
Robert Darling, By Paul Babcock, Att'y,	2 "
Jessie E. Donald, By Paul Babcock, Att'y,	8 "
Josephine W. Dean, By Paul Babcock, Att'y,	24 "

1670

H. M. Flagler, By Paul Babcock, Att'y,	2879	Shares.
H. C. Folger, Jr., By Paul Babcock, Att'y,	102	"
Martha T. Fisk, By Paul Babcock, Att'y,	231	"
The Farmers' Loan & Trust Co., Trustee, By Paul Babcock, Att'y,	483	"
C. A. Griscom, By Paul Babcock, Att'y,	102	"
Chas. W. Harkness, By Paul Babcock, Att'y,	5932	"
Lamon V. Harkness, By Paul Babcock, Att'y,	1343	"
W. L. Harkness, By Paul Babcock, Att'y	1437	"
H. A. Hutchins, By Paul Babcock, Att'y,	208	"
Marie Antonette Heye, Ex'r, By Paul Babcock, Att'y,	380	"
Helen Jewett Hunt, By Paul Babcock, Att'y,	41	"
Annie D. Hogg, By Paul Babcock, Att'y,	10	"
Chas. B. Hogg, By Paul Babcock, Att'y,	133	"
Katherine Hogg, By Paul Babcock, Att'y,	2	"
Robert Hogg, By Paul Babcock, Att'y,	66	"
C. M. Higgins, By Paul Babcock, Att'y,	122	"
Anna J. Houston, By Paul Babcock, Att'y,	42	"
Geo. B. Bonnell, Ex'r, By Paul Babcock, Att'y,	1210	"
Annie B. Jennings, By Paul Babcock, Att'y,	243	"
Esther J. Jennings, By Paul Babcock, Att'y,	562	"
Frederick B. Jennings, By Paul Babcock, Att'y,	51	"
Mary B. Jennings, By Paul Babcock, Att'y,	260	"
Oliver G. Jennings, By Paul Babcock, Att'y,	243	"
Walter Jennings, By Paul Babcock, Att'y,	247	"
Helen J. James, By Paul Babcock, Att'y,	243	"
Salome M. Jones, By Paul Babcock, Att'y,	112	"
William Kennon Jewett, By Paul Babcock, Att'y,	41	"
John S. Kennedy, By Paul Babcock, Att'y,	308	"
Mary Lily Kenan, By Paul Babcock, Att'y,	102	"
Charles Lockhart, By Paul Babcock, Att'y,	1756	"
Kate M. Ladd, By Paul Babcock, Att'y,	213	"
Malcolm Lloyd, By Paul Babcock, Att'y,	96	"

1671

Ambrose M. McGregor, By Paul Babcock, Att'y,	205	Shares.
V. Everitt Macy, By Paul Babcock, Att'y,	769	"
Wm. H. Macy, Jr., Ex'r., By Paul Babcock, Att'y,	503	"
Wm. H. Macy, Jr., By Paul Babcock, Att'y,	51	"
D. O. Mills, By Paul Babcock, Att'y,	133	"
Alexander McDonald, By Paul Babcock, Att'y,	446	"
John G. McCullogh, By Paul Babcock, Att'y,	51	"
Lizzie D. Moffat, By Paul Babcock, Att'y,	10	"
The New York Life Insurance and Trust Co., Trustee, By Paul Babcock, Att'y,	544	"
Daniel O'Day, By Paul Babcock, Att'y,	180	"
O. H. Payne, By Paul Babcock, Att'y,	4112	"
C. M. Pratt, Trustee, By Paul Babcock, Att'y,	5141	"
C. M. Pratt, By Paul Babcock, Att'y,	514	"
Elizabeth T. Preston, By Paul Babcock, Att'y,	102	"

A. J. Pouch, By Paul Babcock, Att'y,	51	Shares.
Henry H. Rogers, By Paul Babcock, Att'y,	1933	"
John D. Rockefeller, By Paul Babcock, Att'y,	26411	"
William Rockefeller, By Paul Babcock, Att'y,	1336	"
Sarah Jewett Robbins, By Paul Bobcock, Att'y,	41	"
Francis F. Robbins, By Paul Babcock, Att'y,	10	"
L. H. Severance, By Paul Babcock, Att'y,	549	"
Joseph Seep, By Paul Babcock, Att'y,	102	"
George W. Smith, By Paul Babcock, Att'y,	51	"
James Stillman, By Paul Babcock, Att'y,	87	"
William T. Scheide, By Paul Babcock, Att'y,	102	"
Charles A. Sterling, By Paul Babcock, Att'y,	63	"
Charles Stone, By Paul Babcock, Att'y,	102	"
Joseph W. Sandford, By Paul Babcock, Att'y,	23	"
William M. Sandford, By Paul Babcock, Att'y,	9	"
W. H. Tilford, By Paul Babcock, Att'y,	308	"
Catherine H. Tilford, By Paul Babcock, Att'y,	61	"
Lewis S. Thompson, By Paul Babcock, Att'y,	114	"
United States Trust Co. of New York Trustee, By Paul Babcock, Att'y,	329	"

1672

William T. Wardwell, By Paul Babcock, Att'y,	82	Shares.
T. H. Wheeler, By Paul Babcock, Att'y,	35	"
Howard Willets, By Paul Babcock, Att'y,	154	"
Joseph Bushnell, Ex'r, By Paul Babcock, Att'y,	540	"
Charles E. Welling, By Paul Babcock, Att'y,	5	"
Howard Wood, By Paul Baabcock, Att'y,	66	"
Julia H. York, By Paul Babcock, Att'y,	139	"
Paul Babcock,	1	"
J. H. Alexander,	71	"

Endorsed: "Filed Jun- 16, 1899. George Wurts, Secretary of State."

Endorsed: State of New Jersey. Department of State. Comparing and Certifying Division. Copy Correct. Compared by Lycraft. Original Read by Dalton. Hendricks in charge of Division.

STATE OF NEW JERSEY,
DEPARTMENT OF STATE.

I, S. D. Dickinson, Secretary of State of the State of New Jersey, do hereby certify, That the foregoing are true copies of the certificate of incorporation of the Standard Oil Company of New Jersey, filed in this Department August 5th, 1882; and certificates of amendment of said certificate of incorporation, filed respectively March 19th, 1892, March *March 19th, 1892, March* 25th, 1892, March 31st, 1892 and June 16th, 1899, and the endorsements thereon, as the same are taken from and compared with the originals now remaining on file and of record therein.

In testimony whereof, I have hereunto set my hand and affixed

my official seal, at Trenton, this twenty-sixth day of February, A. D. 1907.

[SEAL.] S. D. DICKINSON,
Secretary of State.

1673 STATE OF NEW JERSEY:

I, Edward C. Stokes, Governor of the State of New Jersey, do hereby certify that S. D. Dickinson, Esquire, who hath signed the annexed Certificate, and whose official seal is thereto annexed, was, at the doing thereof, and now is, Secretary of State of the State of New Jersey, duly appointed, commissioned and sworn, and that full faith and credit are to be given to his official attestations; that the said signature is in the proper handwriting of the said S. D. Dickinson, and the seal his seal of office, and that the said Certificate is in due form of law and by the proper officer.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State of New Jersey to be hereunto affixed at the City of Trenton in said State, this twenty sixth day of February, in the year of our Lord one thousand nine hundred and seven and of the Independence of the United States the one hundred and thirty first.

By the Governor,

E. C. STOKES.

[SEAL.] S. D. DICKINSON,
Secretary of State.

Endorsed: Exemplified Copy of Certificate of Incorporation and Amendments of the Standard Oil Company. New Jersey. 24551. Filed May 21, 1907. D. J. Pickle, Clerk; By J. A. Belger, Deputy. (6.)

No. 1.

No. 24551.

STATE OF TEXAS
vs.
WATERS-PIERCE OIL COMPANY.

Suit Pending in the 26th Judicial District Court, Travis County, Texas.

1674 It is agreed, for the purposes of this case, only, upon the following facts, subject to all legal objections by either party:

First. That the Standard Oil Company of New Jersey is a corporation organized under the laws of New Jersey; that since its organization in 1882 it has not conducted any business in the State of Texas; that it has not applied for or been granted a permit to transact any of its corporate business in the State of Texas.

Second. That said Standard Oil Company of New Jersey did own in the Waters Pierce Oil Company, a corporation organized

under the laws of the State of Missouri, in May, 1878, 2,747 shares out of a total of 4,000 shares of the said company, and that since about the 24th day of September, 1900, it has owned 2,748 shares of the capital stock out of a total of 4,000 shares of the Waters Pierce Oil Company organized under the laws of Missouri, May 29, 1900.

Third. That the said Standard Oil Company of New Jersey owns a majority of the shares of the capital stock of the Standard Oil Company of Indiana, a corporation organized under the laws of the State of Indiana, on the 11th day of June, 1889, and that said Standard Oil Company of Indiana does business in Indiana, a part of Missouri, Illinois, Iowa, Wisconsin, Michigan, Kansas, South Dakota and North Dakota, but has at no time since its organization transacted any business in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do any business in said State of Texas.

Fourth. That the said Standard Oil Company of New Jersey owns a majority of the shares of the capital stock of the Standard Oil Company of New York, a corporation organized under the laws of the State of New York, on the 10th day of August, 1882; that the Standard Oil Company of New York does business in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont and New Hampshire, and it has at no time transacted any busi-
1675 ness in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do any business in the said State of Texas.

Fifth. That the said Standard Oil Company of New Jersey owns a majority of the shares of the capital stock of the Standard Oil Company of Kentucky, a corporation organized under the laws of the State of Kentucky, on the 7th day of October, 1886, and that the said Standard Oil Company of Kentucky does business in the following states: Kentucky; Tennessee, Georgia, Florida, Alabama, Mississippi and part of Louisiana; that the said Standard Oil Company of Kentucky has at no time transacted any business in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do business in said State of Texas.

Sixth. That the said Standard Oil Company of New Jersey owns a majority of the shares of the capital stock of the Continental Oil Company, a corporation organized under the laws of the State of Iowa, in December 1884, and that the said Continental Oil Company has at no time transacted any business in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do any business in said State of Texas.

Seventh. That the said Standard Oil Company of New Jersey owns a majority of the shares of capital stock of the Republic Oil Company, a corporation organized under the laws of the State of New York on the 4th day of June, 1901; and that said Republic Oil Company has at no time transacted any business in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do any business in said State of Texas.

Eighth. That said Standard Oil Company of New Jersey has owned the said majority shares of the capital stock of the Standard

Oil Company of New York, and of the Standard Oil Company of Kentucky, and of the Continental Oil Company of Iowa, and
1676 of the Standard Oil Company of Indiana, and of the Republic Oil Company of New York, since practically the dates of their respective organizations.

Witness our hands this 30th day of April, 1907.

J. P. LIGHTFOOT,
G. W. ALLEN,
Attorneys for Plaintiff.

J. D. JOHNSON,
H. S. PRIEST, AND
D. W. ODELL,
Attorneys for Defendant.

Endorsed: No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Company. Stipulation. Filed May 10, 1907. D. J. Pickle, Clerk.

No. 2.

No. 24551.

STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

Suit Pending in the 26th Judicial District Court, Travis County, Texas.

It is hereby stipulated and agreed by and between the counsel in this cause that the agreement signed and entered into by the Eagle Refining Company, S. S. Drake, President, S. S. Drake, A. G. Carpenter, W. A. Smith, William H. K. Rose and A. W. Clem, on the 5th day of October, 1894, and the memorandum of agreement dated St. Louis, Missouri, September 13, 1894, and signed by H. C. Pierce, President, and William H. K. Rose, and the acceptance signed by W. A. Smith, Secretary, dated Cleveland, Ohio October 1, 1894, and the memorandum of agreement made and entered into in the City of St. Louis on the 5th day of October, 1894, and signed by the Waters Pierce Oil Company, by H. C. Pierce, P. T., and A. W. Clem, all of which are attached to plaintiff's first original amended petition in this cause and marked exhibit C, are true copies of each of said documents and may be offered in evidence in this cause with the same force and effect as if they were originals and properly proven up.

1677 It is further stipulated and agreed that the said agreements and contracts were executed and carried out; that if the defendant shall produce the originals of said documents, as set forth in exhibit C as aforesaid, upon the trial of said cause, that said originals may be substituted in lieu of said copies, and this stipulation and said original documents or this stipulation and the copies herein agreed to, in the event defendant does not so produce said

originals, shall be offered in evidence in said cause subject to all legal objections that may be offered against the originals if the same were introduced.

Witness our hands this 30th day of April, 1907.

J. P. LIGHTFOOT,
G. W. ALLEN,
Attorneys for Plaintiff.

J. D. JOHNSON,
D. W. ODELL,
H. S. PRIEST,
Attorneys for Defendant.

Endorsed: No. 24,551. The State of Texas *vs.* Waters Pierce Oil Co. Stipulation. Filed May 10, 1907. D. J. Pickle, Clerk.

No. 3.

No. 24551.

STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

Suit Pending in the 26th Judicial District Court, Travis County, Texas.

In lieu of the testimony of Mr. John D. Archbold and to avoid the expense of taking his testimony, it is agreed between the respective counsel for plaintiff and defendant in the above cause as follows:

That the copy of the agreement commonly called the Standard Oil Trust Agreement, entered into as of the date of January 2, 1882, and the supplemental argeement dated the 4th of January, 1882, marked respectively Exhibits A and B of plaintiff's 1678 first amended original petition in said cause and set forth therein, are true copies of said agreements and may be read in evidence in this cause with the same force and effect as the originals of said agreements if properly proven up, subject to all objections that could be urged against the originals if offered in evidence, except the proof of its execution, and the correctness of the copy and the production of the original is waived. All other objections may be urged against the introduction of this copy that could be urged against the introduction of the original.

It is further stipulated and agreed that the Waters Pierce Oil Company, as a corporation, did not sign either the agreement or the supplemental agreement; that Mr. Henry Clay Pierce, who at that time owned substantially 40 per cent. of the stock of the Waters Pierce Oil Company, did not sign either of said agreements nor deposit any part of his stock under either of them.

It is further stipulated and agreed that Mr. Horace A. Hutchins and Mr. W. P. Thompson, at the date of said agreement, owned

substantially 40 per cent. of the stock of the Waters Pierce Oil Company, signed said agreement and deposited their stock thereunder; that the Chess-Carley Company, at said date, owned substantially 20 per cent. of the stock of the Waters-Pierce Oil Company, did not sign said agreement, but deposited said shares under said agreement.

It is further stipulated and agreed that from the date of the organization of the Standard Oil Trust, in accordance with the agreements herein referred to, the Trustees of the Standard Oil Trust owned and held substantially 60 per cent. of the capital stock of the Waters-Pierce Oil Company and continued to hold and own the same until the year 1892.

It is further stipulated and agreed that the Waters-Pierce Oil Company alluded to in this stipulation is the corporation organized under the laws of Missouri in May, 1878.

This stipulation and the original trust agreements, as set
1679 forth in plaintiff's first amended original petition, shall be offered in evidence with the same force and effect and subject to all the objections as if the same were the testimony of said John D. Archbold and given in accordance with law in this cause.

Witness our hands this 30th day of April, 1907.

J. P. LIGHTFOOT,
G. W. ALLEN,
Attorneys for Pl'ff.

J. D. JOHNSON,
D. W. ODELL,
H. S. PRIEST,
Attorneys for Defendant.

Endorsed: No. 24,551. The State of Texas *vs.* Waters Pierce Oil Co. Stipulation. Filed May 10, 1907. D. J. Pickle, Clerk.

No. 4.

No. 24551.

STATE OF TEXAS, Plaintiff,
vs.
WATERS PIERCE OIL COMPANY, Defendant.

Suit Pending in District Court, Travis County Texas, 26th Judicial District.

It is hereby stipulated and agreed for the purposes of this case only, that the letters attached hereto and marked with the initials "J. P. L." and "J. D. J.," being the initials of Mr. Lightfoot counsel for the State and Mr. Johnson counsel for the defendant, bear the genuine signature of Wade Hampton, said letters being generally designated as follows:

Letter dated New York, July 7th, '99, addressed to Mr. H. C.

Pierce, Pres't Waters Pierce Oil Company, St. Louis, Missouri, and signed "Wade Hampton, Jr.," and marked Exhibit "A."

Letter dated New York, February 8, 1901, addressed to Mr. J. P. Gruet, Vice Pres., Waters Pierce Oil Company, St. Louis, Missouri, and signed "Wade Hampton" and marked Exhibit "B."

Letter dated New York, November 7th, 1902, addressed to Mr. J. P. Gruet, Waters Pierce Oil Co., St. Louis, Missouri, signed "Wade Hampton" and marked Exhibit "C."

1680 Letter dated New York, November 12th, 1902, addressed to Mr. J. P. Gruet, Waters Pierce Oil Company, St. Louis, Missouri, signed "Wade Hampton" and marked Exhibit "D."

Letter dated New York, November 24th, 1902, addressed to Mr. J. P. Gruet, V. P. Waters Pierce Oil Co., St. Louis, Missouri, signed "Wade Hampton" and marked Exhibit "E."

Letter dated New York, November 10th, 1903, addressed to "My dear Mr. Gruet" and signed "Wade Hampton" and marked Exhibit "F."

It is further stipulated and agreed that said letters were written and the respective persons therein mentioned were sent at the instance of the Standard Oil Company, a corporation organized under the laws of the State of New Jersey, and commonly referred to as the Standard Oil Company of New Jersey, which at the time said letters were written and said parties were sent, was the owner of shares of stock of the Waters Pierce Oil Company, and for the purpose of getting such information as would be revealed by an audit of the books and accounts of the Waters Pierce Oil Company by the respective parties designated in the respective letters.

It is further stipulated that the letters made an exhibit to this stipulation may be offered in evidence subject to such legal objections as may be made to them as evidence.

It is further stipulated that either party may use the deposition of Wade Hampton heretofore taken on interrogatories propounded by the State in the trial of this cause, subject to all legal objections as to competency and relevancy, &c.

J. P. LIGHTFOOT,
G. W. ALLEN,
Counsel for the Pl'ff.

J. D. JOHNSON,
H. S. PRIEST,
Counsel for the Defendant.

1681 26 Broadway, Room 800.

Wade Hampton. NEW YORK, *Feb. 8th,* 1901.

Mr. J. P. Gruet, Vice-Pres. Waters Pierce Oil Company, St. Louis, Mo.

DEAR SIR: Our Mr. Conrey will probably arrive at your office on Monday next, the 11th inst., to take up the audit of the books and accounts of your general office.

For reasons which you undoubtedly will appreciate, it is best

that Mr. Conrey be considered an employee of your company during his examination. Therefore kindly enter his name on your pay roll from the date of his arrival at $191.67 per month, also kindly pay what expenses he is under from the time he left New York.

Yours truly, WADE HAMPTON.

(No Copy Taken) (Transmitted Feb. 11, 1901. To A. M. F., H. C. P. Pt.) (Received Feb. 11, 1901, Answered — J. P. Gruet,) Exhibit "B." J. P. L. J. D. J.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

26 Broadway, Room 800.

Wade Hampton.
(Personal.)

NEW YORK, *Nov. 7th,* 1902.

Mr. J. P. Gruet, Waters Pierce Oil Company, St. Louis, Mo.

DEAR SIR: Our Mr. C. W. Norman bears with him a letter of introduction to you from Mr. McNall. Mr. Norman will be assisted in the work of auditing the books and accounts of the General Office of your company by our Messrs. W. H. Henderson and W. J. Higgs. I will give them letters of introduction to Mr. Norman, who in turn will introduce them to you.

Please place Mr. Norman's name on your pay roll at the rate of $2500.00 per annum, beginning with the time he leaves his
1682 home for St. Louis, and also pay his expense bills monthly as he renders them to you.

Yours very truly, WADE HAMPTON.

(No Copy Taken) (Transmitted Nov. 10, 1902, To A. M. F. V. P. & G. M.) (Received Nov. 10, 1902, Answered 10, J. P. Gruet.) (Transmitted Nov. 10, 1902, To C. M. A. & J. D. J.) Exhibit "C." J. P. L. J. D. J.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

26 Broadway, Room 800.

Wade Hampton.
Personal.

NEW YORK, *Nov. 12th,* 1902.

Mr. J. P. Gruet, Waters Pierce Oil Company, St. Louis, Mo.

DEAR SIR: I beg to acknowledge receipt of your favor of 10th inst. Answering your inquiry. Please place Mr. Henderson's name on your pay roll when he arrives in St. Louis, also that of Mr. Higgs, treating them the same as Mr. Norman, so far as salary and expenses are concerned, during their stay in St. Louis. The full names are—

	Salary per annum.
W. H. Henderson	$1800.00
W. J. Higgs	$1800.00

Mr. Henderson should arrive in St. Louis in a few days, but Mr. Higgs will probably not reach there for 10 days or so.

I have instructed the gentlemen named above to date their commencement with your company from the time they buy their tickets, and to include the railroad fare &c., to St. Louis in their expenses to your company.

Trusting you are in good health, and with kind regards, I remain.

Yours truly, WADE HAMPTON.

(Received Nov. 14, 1902, Answered 26 J. P. Gruet.) Exhibit "D." J. P. L. J. D. J.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

1683 26 Broadway, Room 800.

Wade Hampton.

NEW YORK, *Nov. 24th*, 1902.

Mr. J. P. Gruet, V. P. Waters Pierce Oil Company, St. Louis, Mo.

DEAR SIR: This letter will serve to introduce to you our Mr. W. J. Higgs, who visits St. Louis for the purpose of assisting Mr. Norman in the auditing work. I wrote you some days ago concerning him. Please place his name on your pay roll at the rate mentioned in my former letter. Any courtesies extended to Mr. Higgs will be much appreciated by

Yours truly, WADE HAMPTON.

(Received Nov. 26, 1902. Answered 26, J. P. Gruet.) Exhibit "E." J. P. L. J. D. J.

Endorsed No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

26 Broadway, Room 800.

Wade Hampton.

NEW YORK, *Nov. 10th*, 1903.

MY DEAR MR. GRUETT: I am sending our Mr. R. B. Backus to St. Louis to take up the audit of the books and accounts of the General office of W. P. O. Co. Please place his name on your pay roll at $3000 per annum, to begin with date he leaves Pittsburg for St. Louis. I have said to him also to commence his expense acct. for your company with the purchase of his railroad tickets for St. Louis, from Pittsburg.

I will send two other men to assist Mr. Backus as soon as they are relieved at other points. Mr. Backus is a very intelligent and agreeable man, and has had a great deal of experience in his line of work. I have no doubt you will be pleased with him.

Yours very truly, WADE HAMPTON.

Mr. Backus will probably be in St. Louis about the 20th inst.

(Copy Sent H. C. P. 11/14/03. M. J. B. Ans. Nov. 20/03.) (Read at Executive Committee Meeting Nov. 13, 1903. C. A. P. Secretary.) Notified W. H. that R. B. B. had arrived Nov. 20, 1903. Exhibit "F." J. P. L. J. D. J.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

1684 26 Broadway, Room 800.

Wade Hampton, Jr.

NEW YORK, *July 7th,* '99.

Mr. H. C. Pierce, Pres't Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: This letter will introduce to you our Mr. John B. L. Hornberger, who visits St. Louis at my request for the purpose of auditing the books, acc'ts &c., of your General Office. I will, in a short time, send him one or two auditors to assist him in the work. Any favors extended to Mr. Hornberger will be much appreciated by

Yours truly, WADE HAMPTON, JR.

(Received Jul- 12, 1899. Ans.—By A. M. F.) (Received Jul- 12, 1899. Answered—J. P. Gruet.) Exhibit "A." J. P. L. J. D.J.

Endorsed: No. 24551. The State of Texas *vs.* Waters Pierce Oil Company. Filed May 31, 1907. D. J. Pickle, Clerk, By J. A. Belger, Deputy.

Endorsed: No. 24551. The State of Texas *vs.* Waters Pierce Oil Co. Stipulation. Filed May 10, 1907. D. J. Pickle, Clerk.

No. 20.

Know all men by these presents that we, whose names are undersigned desiring to become incorporated under and in the mode provided by the laws of Kentucky, do sign, seal and adopt these Articles of Incorporation, to-wit:

1st. The names of the incorporators are W. H. Tilford, New York City. W. T. Jordan, Louisville, Kentucky. L. T. Rosengarten, Louisville, Kentucky. The name of the proposed corporation is Standard Oil Company. The principal place of business is Louisville, Kentucky.

2nd. The general nature of the business proposed to be transacted is the manufacturing refining buying and selling of petroleum and all its products and naval stores.

3rd. The amount of capital stock shall be Six Hundred Thousand Dollars divided into shares of One Hundred Dollars each
1685 which shall be fully paid in cash at the date of organization of the Company.

4th. The Company shall begin its existence on November 1st, A. D. 1886 and continue for twenty five years.

5th. Its affairs shall be conducted by five directors of whom three shall constitute a quorum. Its officers shall be a President,

a Vice President, a Secretary and a Treasurer. One person may hold two of said offices. The Directors shall be elected by the stockholders on the first Thursday of February of each year and shall hold until their successors are duly elected. The Directors shall cho-se the officers and remove them at pleasure.

6th. The Directors and officers to hold until the first Thursday of February, A. D. 1887, shall be as follows:

Directors: W. H. Tilford, Geo. H. Vilas, H. H. Rogers, I. D. Archbold, W. P. Thompsan.

President, W. H. Tilford. Vice President, Geo. H. Vilas. Secretary, W. T. Jordan. Treasurer, L. T. Rosengarten.

7th. The indebtedness of the corporation whether direct or contingent shall at no time exceed the sum of Four Hundred Thousand Dollars.

8th. Private property of the stockholders of the corporation shall be exempt from liability for corporate debts.

In witness whereof, the said parties have hereunto set their hands and seals this seventh day of October, A. D. 1886.

W. H. TILFORD. [SEAL.]
W. T. JORDAN. [SEAL.]
L. T. ROSENGARTEN. [SEAL.]

I, Geo. H. Webb, Clerk of the County Court of Jefferson County in the State of Kentucky, do certify that on this day the foregoing Articles of Incorporation *was* produced to me in my office, and acknowledged and delivered by W. H. Tilford, W. T. Jordan and L. T. Rosengarten, parties thereto to be their act and deed and that I have recorded them and this certificate in my said office.

1686 Witness my hand and official seal this 7 day of October, 1886.

[SEAL.] GEO. H. WEBB, *Clerk.*

Amendment to the Articles of Incorporation of the Standard Oil Company of Kentucky.

The Articles of Incorporation of the Standard Oil Company of Kentucky which are recorded in Corporation Book No. 4 page 70, of the County Clerk's Office of Jefferson County, Kentucky, are hereby amended as follows, to-wit:

The amount of capital stock of said corporation shall be One Million ($1,000,000) Dollars, to be divided into shares of One Hundred ($100.00) dollars each and the $400,000 of increase of capital hereby authorized shall be paid in in property at its cash value within four months after the date hereof. The number of directors of said corporation shall be nine.

Witness the signature and seal of said corporation by its President hereto duly authorized this 1st day of April, 1892.

[SEAL.] STANDARD OIL COMPANY,
By C. M. PRATT, *President.*

Attest:
L. D. CLARKE, *Ass't Sec'y.*

STATE OF NEW YORK, *County of New York, ss:*

I, Wm. H. Erwin, a Notary Public in and for said City and County do hereby certify that C. M. Pratt to me personally known appeared before me this 9th day of April, 1892, and being by me duly sworn said that he is President of the Standard Oil Company that the corporate seal affixed to the foregoing instrument is the corporate seal of said company, that the same was affixed thereto by order of the Board of Directors and that the signature of the officers of said company in attestation thereof are their true and proper signatures.

Sworn and subscribed before me this 9" day of April, 1892.

[SEAL.] WM. H. ERWIN,
Notary Public, Kings Co.

1687 *Certificate for Kings Co. Filed in New York Co.*

STATE OF NEW YORK, *City and County of New York, ss:*

I, William J. McKenna, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a Court of Record, do hereby certify that Wm. H. Irwin has filed in the Clerk's office of the County of New York, a certified copy of his appointment as Notary Public for the County of Kings, with his autograph signature and was at the time of taking the proof or acknowledgment of the annexed instrument duly authorized to take the same. And further that I am well acquainted with the handwriting of said Notary and verily believe the signature to the said certificate of proof or acknowledgment to be genuine. I further certify that said instrument is executed and acknowledged according to the laws of the State of New York. In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County the 12 day of Apl. 1892.

[SEAL.] WM. J. McKENNA, *Clerk.*

I, Geo. H. Webb, Clerk of the County Court of Jefferson County in the State of Kentucky, do certify that on this day at 12:15 O'clock P. M. the foregoing articles of Incorporation were produced to me in my office, and that I have recorded them, this and the foregoing certificates in my said office.

Witness my hand this 15th day of Apl. 1892.

GEO. H. WEBB, *Clerk.*

I, W. J. Semonin, Clerk of the County Court of Jefferson County in the State of Kentucky, certify that the foregoing four pages contain a true copy of Articles of Incorporation of Standard Oil Company, together with certificate of acknowledgment and record thereof, as the same appear of record in my office in Corporation Book 4 page 70; also a true copy of Amendment to the Arti-
1688 cles of Incorporation of the Standard Oil Company of Kentucky, together with certificate of acknowledgment and

record thereof, as the same appear of record in my office in Corporation Book 7, page 543.

In Testimony Whereof, I hereunto set my hand and affix the official seal of Jefferson County, Kentucky, of which I am the custodian, at Louisville, Kentucky, this 13th day of April, 1907.

W. J. SEMONIN,

[SEAL.] *Clerk Jefferson County Court, Kentucky.*

COMMONWEALTH OF KENTUCKY,
Office of Secretary of State, Frankfort:

I, H. V. McChesney, Secretary of State of the Commonwealth of Kentucky, hereby certify that on the dates shown on the foregoing Articles of Incorporation the corporation law of the state did not require that corporations of the character shown in these articles should file their papers with the Secretary of State, the statutes at that time requiring that they be filed with the county clerk only; and I further certify that W. J. Semonin, whose genuine signature appears on the foregoing certificate is the duly elected and acting Clerk of the County Court of Jefferson County, that said court is a court of record, having a seal, and that said Clerk is the custodian of said seal, which said seal is affixed to the foregoing certificate.

Witness my hand and official seal, and the Great Seal of the Commonwealth, this April 15, 1907.

H. V. McCHESNEY,
Secretary of State.

[SEALS.]

Endorsed: Copy Articles of Incorporation of Standard Oil Company. Corporation Book 4, page 70. Copy Amendment to Articles of Incorporation of Standard Oil Company of Kentucky. Corporation Book 7 page 543. No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Charter, S. O. of Ky. (20)

1689

STATE OF IOWA,
EXECUTIVE DEPARTMENT.

I, Albert B. Cummins, Governor of the State of Iowa, and keeper of the great seal,

Do hereby certify, that W. C. Hayward is the duly elected and qualified Secretary of State of the State of Iowa; that he is the keeper of the corporate records of said state; that he is duly authorized under the laws of the State of Iowa to make certification of copies of such records; that the attached certificate of the said W. C. Hayward is in due form and made by the proper officer; that the seal attached thereto is the seal of his office; that I am well acquainted with the handwriting of the said W. C. Hayward, and that I verily believe the signature thereto attached to be genuine.

In witness whereof, I have hereunto affixed my signature and an impression of the great seal of the State of Iowa, on this third day of April, A. D. 1907.

[SEAL.]

ALBERT B. CUMMINS,
Governor of Iowa.

No. 33.

STATE OF IOWA,
SECRETARY OF STATE.

I, W. C. Hayward, Secretary of State of the State of Iowa, do hereby certify that the attached instrument of writing is a true and correct copy of Articles of Incorporation and Amendments Thereto of the Standard Oil Company. Council Bluffs, Pottawattamie County, Iowa as the same appears of record in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Secretary of State of the State of Iowa. Done at Des Moines, the Capital of the State April 3, A. D. 1907.

[SEAL.] W. C. HAYWARD,
Secretary of State.

1690 EXHIBIT D.

A special meeting of the stockholders of the Standard Oil Company was held at the office of the company, Council Bluffs, Iowa, on Thursday, the 11th day of May, 1905, in pursuance of the following call issued by a majority of the Directors of said company, in pursuance of its by-laws:

Resolved, that a special meeting of the stockholders of this company be, and is hereby, called to meet at the office of the company, Council Bluffs, Iowa, on May 11th, 1905, at eleven o'clock A. M., for the following purposes:

First. To change Section VI of the Articles of Incorporation so that the same shall read as follows:

SECTION VI. The highest amount of indebtedness to which the corporation is at any time to subject itself is Six Hundred and Sixty-six thousand, Six Hundred and Sixty-six Dollars ($666,-666.00).

Second. *The* renew the charter of said corporation for the term of twenty (20) years.

Resolved, that ten days' notice of said meeting be given personally, or mailed to, each stockholder.

At such meeting, stockholders owning the entire capital stock of said company were represented in person or by proxy.

Mr. C. L. Alleman was appointed Chairman and Mr. Charles T. White Secretary of the meeting. On motion, the following resolutions were adopted by the unanimous vote of the stockholders owning all of the stock of said Standard Oil Company.

Resolved: That the Articles of Association of the Standard Oil Company be, and are hereby, renewed for twenty years from July 1st, 1905.

Resolved, that Mr. W. H. Tilford, President, and Mr. Charles T. White, Assistant Secretary, of the Standard Oil Company, be, and are hereby, designated to certify, execute and make affidavit to the above proceedings and renewal of the charter of said company.

1691 We certify that the above is a correct transcript showing the proceedings of the said meeting of stockholders, resulting

in the renewal of the Articles of Association of the Standard Oil Company for the period of twenty years from July 1st, 1905.

W. H. TILFORD, *President.*
CHARLES T. WHITE,
Ass't Secretary.

STATE OF NEW YORK, *County of New York, ss:*

On this 11th day of May, 1905, before me A. T. Doremus, a Notary Public in and for said County, appeared Mr. W. H. Tilford, President, who being by me first duly sworn, deposes and says that the above is a correct transcript of the proceedings of the meeting of the stockholders of the Standard Oil Company, resulting in the renewal of the Articles of Association of said company for the period of twenty years.

Witness my hand and official seal the day and year first aforesaid.

[SEAL.]

A. T. DOREMUS,
Notary Public, Richmond County.

Certificate filed in New York County.

STATE OF NEW YORK, *County of New York, ss:*

I, Thomas L. Hamilton, Clerk of the County of New York, and also Clerk of the Supreme Court for the said county, the same being a court of record, do hereby certify, that A. T. Doremus has filed in the Clerk's Office of the County of New York, a certified copy of his appointment and qualification as Notary Public for the County of Richmond with his autograph signature, and was at the time of taking the annexed deposition, duly authorized to take the same, and that I am well acquainted with the handwriting of said Notary Public, and believe that the signature to the annexed certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 12 day of May, 1905.

[SEAL.]

THOS. L. HAMILTON, *Clerk.*

1692 STATE OF IOWA, *County of Pottawattamie, ss:*

On this 15th day of May, 1905, before me, Clerk Dist. Court in and for said county, appeared Mr. Charles T. White, Assistant Secretary, who being by me first duly sworn, deposes and says that the above is a correct transcript of the proceedings of the meeting of the stockholders of the Standard Oil Company, resulting in the renewal of the Articles of Association of said Company for the period of twenty years.

Witness my hand and official seal the day of year first aforesaid.

[SEAL.]

H. V. BATTEY,
Clerk Dist. Court.

Articles of Incorporation of Standard Oil Company.

We, John D. Archbold, W. H. Tilford and Samuel C. T. Dodd, desiring to form a corporation under and in accordance with the laws of the State of Iowa, do hereby adopt the following Articles of Incorporation.

1. The name of the corporation shall be Standard Oil Company, and its principal place of transacting business shall be Council Bluffs, Iowa.

2. The general nature of the business to be transacted shall be that of dealing in petroleum and its products, oils and naval stores, lead and paints.

3. The amount of the capital stock shall be Six Hundred Thousand Dollars to be paid in cash at the date of the organization of the company.

4. The time of the commencement of the corporation shall be July 1st, 1885, and it shall terminate twenty years from that date.

5. The affairs of the corporation shall be conducted by five Directors, one of whom shall be President and one Vice President of the Company a Secretary and Treasurer. One person may fill
1693 the office of both Secretary and Treasurer. Elections shall be held on the second Thursday of May in each year. On the organization of the Company Directors shall be elected who shall hold office until the second Thursday of May, 1886.

6. The highest amount of indebtedness to which the corporation is at any time to subject itself is One Hundred and Fifty Thousand Dollars.

7. Private property of the stockholders shall be exempt from liability for corporate debts.

In witness whereof, we have hereunto set our hands this tenth day of June, A. D. 1885.

JOHN D. ARCHBOLD.
W. H. TILFORD.
SAMUEL C. T. DODD.

STATE OF NEW YORK, *City and County of New York, ss:*

This is to certify, that on this tenth day of June, A. D. 1885, before me, J. W. Hale, a commissioner of deeds for the State of Iowa in the City of New York, personally appeared John D. Archbold, W. H. Tilford and Samuel C. T. Dodd, personally known to me to be the identical individuals whose names are affixed to the foregoing Articles of Incorporation and severally acknowledged the same to be their voluntary act and deed for the purposes therein mentioned.

In witness whereof, I have hereunto set my hand and seal the day and year above written.

[COM'R'S SEAL.] J. W. HALE,
Comm'r for the State of Iowa Residing in New York.

Endorsed.

STATE OF IOWA, *ss:*

Filed for record in office of Secretary of State, June 15th, A. D. 1885, and recorded in Book S, page 459.

E. D. JACKSON,
Secretary of State.

1694 STATE OF IOWA, *Pottawattamie Co., ss:*

Filed for record the 13th day of June, A. D. 1885, at 2 o'clock P. M. and recorded in Book 104, page 407 of County Records.

H. J. CHAMBERS, *Recorder.*

Amendment of Charter.

Whereas John D. Archbold, W. H. Tilford and Samuel C. T. Dodd did on the 10th day of June, 1885, in accordance with the laws of the State of Iowa, adopt Articles of Incorporation of the Standard Oil Company, which Articles were filed on the 13th day of June, 1885, in Pottawattamie County in Book 104, page 407 of County Records and on the 15th day of June, 1885, in the office of the Secretary of State in Book S, page 459, and

Whereas there are no stockholders of said company save the promoters thereof aforesaid

Now we, the said John D. Archbold, W. H. Tilford and Samuel C. T. Dodd, do hereby, in accordance with the laws aforesaid adopt the following amendment to said Articles, to be added to Section 1, to-wit: The said corporation shall have the right to carry on its business at any point in the State of Iowa and in any other states and Territories.

In witness whereof we have hereunto set our hands the 27th day of June, 1885.

JOHN D. ARCHBOLD.
W. H. TILFORD.
SAMUEL C. T. DODD.

STATE OF NEW YORK, *City and County of New York, ss:*

This is to certify that on this 27th day of June, A. D. 1885, before me, James W. Hale, a Commissioner of Deeds for the State of Iowa, in the City of New York, personally appeared John D. Archbold, W. H. Tilford, and Samuel C. T. Dodd, personally known to me to be the identical individuals whose names are affixed
1695 to the foregoing instrument and severally acknowledged the same to be their voluntary act and deed for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and seal the day and year above written.

[COM'R'S SEAL.]

J. W. HALE,
Com'r for Iowa in New York and Public Notary, 4 Hanover Street.

Endorsements on Above.

STATE OF IOWA, *ss:*

Filed for Record in office of Secretary of State Aug. 11th, A. D. 1885, and recorded in Book T, page 8.

FRANK D. JACKSON,
Secretary of State.
D. W. SMITH, *Deputy.*

STATE OF IOWA, *Pottawattamie Co., ss:*

Filed for record the 5th day of Aug., A. D. 1885, at 4/10 o'clock P. M. and recorded in Book 104, page 433 of County Records.

H. J. CHAMBERS, *Recorder.*

Copy of Certificate of Increase of Capital.

Whereas, John D. Archbold, W. H. Tilford and Samuel C. T. Dodd, did on the 10th day of June, 1885, in accordance with the laws of the State of Iowa, adopt Articles of Incorporation of the Standard Oil Company, which Articles were filed on the 13th day of June, 1885, in Pottawattamie County in Book 104, page 407, of County Records and on the 15th day of June, 1885, in the office of the Secretary of State in Book S, page 459, and,

Whereas, the present stockholders of said company have unanimously agreed to increase the capital stock of said company from the sum of Six Hundred Thousand Dollars as fixed by said Articles to the sum of One Million Dollars.

1696 Now we, the undersigned, being all the stockholders of said company, do hereby adopt the following amendment to said Articles to-wit: Section III of said Articles shall be changed to read as follows: "The amount of capital stock of said company shall be One Million Dollars and the full amount of said capital stock not already paid in, shall be paid in cash on or before the first day of April, A. D. 1892."

In witness whereof we have hereunto set our hands this 24th day of February, A. D. 1892.

(Signed by)

H. L. TEVIS, *Trustee.*
W. H. TILFORD.
H. H. ROGERS.
JOHN D. ARCHBOLD.
BENJAMIN BREWSTER.
HENRY M. FLAGLER.
O. B. JENNINGS.
WM. ROCKEFELLER,
By J. D. ROCKEFELLER,
Attorney in Fact.
J. D. ROCKEFELLER.

STATE OF NEW YORK, *City and County of New York, ss:*

This is to certify that on this 25th day of February, A. D. 1892, before me a notary public, in and for said City and County, per-

sonally appeared H. L. Tevis, W. H. Tilford, H. H. Rogers, John D. Archbold and John D. Rockefeller; and J. D. Rockefeller Attorney in Fact for Benjamin Brewster, Henry M. Flagler, O. B. Jennings, and Wm. Rockefeller, personally known to me to be the identical individuals whose names are affixed to the foregoing instrument and severally acknowledged the same to be their voluntary act and deed for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and seal the day and year above written.

(Signed) S. MARSHALL BUSSELLE,
[SEAL.] *Notary Public, New York.*

1697 STATE OF NEW YORK,
City and County of New York, ss:

I, William J. McKenna, Clerk of the City and County of New York, and also Clerk of the Supreme Court of the said City and County, the same being a court of record, do hereby certify, that S. Marshall Busselle, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time — taking such proof of acknowledgment, a notary public in and for the City and County of New York, dwelling in said city, commissioned and sworn and duly authorized to take the same. And further that I am well acquainted with the handwriting of said notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 26th day of February, 1892.

[SEAL.] (Signed) WM. J. McKENNA, *Clerk.*

STATE OF IOWA, *Pottawattamie Co., ss:*

Filed for record the 29th day of February, A. D. 1892, at 11 o'clock A. M. and recorded in Book 307, Page 237 of county records.

(Signed) W. H. THOMAS, *Recorder.*

STATE OF IOWA, *ss:*

Filed for record in office of Secretary of State March 12th, A. D. 1892, and recorded in Book ½, page 275.

(Signed) W. M. McFARLAND,
Secretary of State,
By C. S. BYRKIT, *Deputy.*

1698 EXHIBIT C.

A special meeting of the stockholders of the Standard Oil Company was held at the office of the company, Council Bluffs, Iowa, on Thursday, the 11th day of May, 1905, in pursuance of the following call issued by a majority of the Directors of said Company, in pursuance of its by-laws:

Resolved, that a special meeting of the stockholders of this company be, and is hereby, called to meet at the office of the company, Council Bluffs, Iowa, on May 11th, 1905, at eleven o'clock A. M. for the following purposes:

First. To change Section VI of the Articles of Incorporation so that the same shall read as follows:

SECTION VI. The highest amount of indebtedness to which the corporation is at any time to subject itself is Six Hundred and Sixty-six Thousand, Six Hundred and Sixty-six Dollars ($666,666.00).

Second. To renew the charter of said corporation for the term of twenty (20) years.

Resolved, that ten days' notice of said meeting be given personally, or mailed to, each stockholder.

At such meeting stockholders owning the entire capital stock of said company were represented in person or by proxy.

Mr. C. L. Alleman was appointed Chairman, and Mr. Charles T. White, Secretary of the meeting. On motion, the following resolutions were put by the Chairman and adopted by a unanimous vote of the stockholders owning all the stock of said company.

Resolved, that Section VI of the Articles of Association of this company be amended to read as follows: Section VI. The highest amount of indebtedness to which the corporation is at any time to subject itself is Six Hundred and Sixty-six Thousand, Six Hundred and Sixty-six Dollars ($666,666.00).

Resolved, that Mr. W. H. Tilford, President and Mr. Charles T. White, Assistant Secretary, of this company be, and are hereby designated to certify, sign and acknowledge the foregoing
1699 proceedings and alterations of the Articles of Association.

The meeting thereupon adjourned.

We certify the above to be a correct record of the transaction of said meeting and the alteration of the Articles of Association then adopted.

Witness our hands this 11th day of May, 1905.

W. H. TILFORD, *President.*
CHARLES T. WHITE,
Ass't Secretary.

STATE OF NEW YORK, *County of New York, ss:*

On this 11th day of May, 1905, before me personally appeared Mr. W. H. Tilford, President, to me known to be the person named in and who executed the foregoing instrument as President of said Standard Oil Company, and acknowledged that he executed the same as his voluntary act and deed.

[SEAL.]

A. T. DOREMUS,
Notary Public, Richmond County.

Certificate filed in New York County.

STATE OF NEW YORK, *County of New York, ss:*

I, Thomas L. Hamilton, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being

a Court of Record, Do Hereby Certify, that A. T. Doremus has filed in the Clerk's Office of the County of New York, a certified copy of his appointment and qualification as Notary Public for the County of Richmond with his autograph signature, and was at the time of taking the annexed deposition, duly authorized to take the same, and that I am well acquainted with the handwriting of said Notary Public, and believe that the signature to the annexed certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 12 day of May, 1905.

[SEAL.] THOS. L. HAMILTON, *Clerk.*

1700 STATE OF IOWA, *County of Pottawattamie, ss:*

On this 15th day of May, A. D. 1905, before me personally appeared Mr. Charles T. White, Assistant Secretary, to me known to be the person named in and who executed the foregoing instrument and acknowledged that he executed the same as his voluntary act and deed.

[SEAL.] H. V. BATTEY,
Clerk Dist. Court.

STATE OF IOWA, *Pottawattamie County, ss:*

Filed for record the 15th day of May, A. D. 1905, at 10:00 o'clock A. M. and recorded in Book 435 page 192 of County Records.

G. G. BAIRD, *Recorder,*
Per E. A. LATHROP, *Deputy.*

STATE OF IOWA, *ss:*

Filed for record in the office of Secretary of State May 16th, A. D. 1905, and recorded in Book F-4, page 103.

W. B. MARTIN,
Secretary of State.
D. A. HITES, *Deputy.*

Proof of publication filed July 1, 1905.

Endorsed: Certified Copy. No. 24551. Filed May 31, 1907, D. J. Pickle, Clerk. State of Iowa, Secretary of State. Charter. S. O. Co. of Iowa. (33.)

No. 31.

We the undersigned, do by this agreement associate ourselves together as a body corporate under the provisions of an Act of the General Assembly for the Commonwealth of Pennsylvania relating to corporations for Mining, Manufacturing, Mechanical & Quarrying purposes, approved July 18th, A. D. 1863, By the name and title of

1701 Standard Oil Company.

The objects for which this corporation is formed are the production or purchase and sale of petroleum or coal oil, also the refining of the same, and the buying and selling of the products thereof and to buy and lease lands for and by said corporation for the purpose aforesaid and also to buy, sell trade and deal in pretroleum and its products and minerals or other substances from which oil can be produced, and to manufacture and transport the same to market or cause the same to be procured, manufactured and transported to market and generally to do and perform all manner of things necessary to the carrying on of such business as aforesaid as well as to erect, buy or rent suitable buildings, tenements, railroads, cars, boats or machinery and the purchase of suitable tools and implements for the purpose of carrying on the business aforesaid. And also to manufacture tanks, stills, pipes and other work used in connecting with the oil business either for our own use or for sale. The refinery of such corporation and their office for the transaction of corporate business will be located in the City of Pittsburgh, Allegheny County, Penna. The capital stock of said Company shall be limited to Three Hundred Thousand dollars and the par value of each share shall be one hundred dollars, and the undersigned severally agree to take the number of shares set oposite their respective names.

(5 cent Int. Rev. Stamp.)

(5 cent Int. Rev. Stamp.)

Witness our hands this 15th day of August, A. D. 1868.

Names.	No. of Shares.		Amount.
A. A. Sumner.....	850	Eight Hundred & Fifty..	85,000
Lockhart & Frew.....	600	Six Hundred	60,000
James A. Hutchison....	500	Five Hundred	50,000
Jas. P. Hanna.....	250	Two Hundred & Fifty....	25,000
M. Graver	250	Two Hundred & Fifty...	25,000
R. Robison & Co.....	250	Two Hundred & Fifty...	25,000
N. Holmes Sons.....	300	Three Hundred	30,000

1702 We the undersigned stockholders in the Standard Oil Company do hereby agree that there shall be a meeting for the purpose of organization and the election of officers of said Company, and we accept notice of the fact that said meeting will be held at the office of the Hutchison Oil & Refin'g Company No. 2 Duquesne Way in the City of Pittsburgh on Thursday, Aug. 20th, 1868.

Pittsburgh, Aug. 15th, 1868.

(5 cent Int. Rev. Stamp.)

A. A. SUMNER.
LOCKHART & FREW.
JAMES A. HUTCHISON.
JAS. P. HANNA.
M. GRAVER.
N. ROBISON & CO.
N. HOLMES SONS.

STATE OF PENNSYLVANIA, *Allegheny County, ss:*

James A. Hutchison, President, Chas. Lockhart, Vice President, Jas. H. Wright, Treasurer, R. Robison, M. Graver and James P. Hanna directors of the Standard Oil Company, being each duly sworn doth depose and say, that in pursuance of an Act entitled "An Act relating to corporations for Mechanical, Manufacturing, Mining and Quarrying purposes" passed in General Assembly for the Commonwealth of Pennsylvania, and approved July 18th, 1863, affiants have organized themselves with others by article of agreement in writing (copy of which article is hereto annexed) into an Association entitled as above. That at a meeting of said Association held pursuant to notice (a copy of which notice is also hereunto annexed) affiants were elected President, Treasurer and Directors of such Association. That the purposes of such Association are the production or purchase and sale of Petroleum or Coal Oil, also the Refining of the same and the buying and selling of the products thereof and to buy or lease lands for and by said corporation for the purpose aforesaid, and also to buy, sell, trade and deal in petroleum and its products, and minerals or other substance from which oil can be produced, and to manufacture and transport the same to market, or cause the same to be procured, manufactured and transported to market and generally to do and perform all manner of things necessary to the carrying on of such business as aforesaid, as well as to rent, buy or erect suitable buildings, tenements, railroads, cars, boats, and machinery and the purchase of suitable tools and implements for the purpose of carrying on the business aforesaid. And also to manufacture tanks, stills, pipes, and other work used in connection with the oil business either for our own use or for sale, as set forth in the accompanying Articles of Association. That the amount of the capital stock of such association is Three Hundred Thousand Dollars and the amount already paid in is One Hundred and Twenty Thousand Dollars and that the Par Value of each share in the corporation is One Hundred Dollars.

(5 cent Int. Rev. Stamp.)

1703

(5 cent Int. Rev. Stamp.)

Pittsburgh August 31, 1868.

(Signed) JAMES A. HUTCHISON, *Pres.*
CHARLES LOCKHART, *V. P.*
JAS. H. WRIGHT, *Treas.*
M. GRAVER, *Director.*
N. ROBISON, "
JAS. P. HANNA, "
A. A. SUMNER, "

STATE OF PENNSYLVANIA, *Allegheny County, ss:*

On the 31st day *day* of August, A. D. 1868, appeared before me, an alderman of the City of Pittsburgh, in said county Jas. A. Hutchison, President, Chas. Lockhart, Vice President, Jas. H. Wright, Treasurer, R. Robison, M. Graver and Jas. P. Hanna, the Board

of Directors of the Standard Oil Company who being each duly sworn, do severally depose and say that the foregoing certificate is correct and true in all matters therein stated to the best of their knowledge and belief.

Sworn and subscribed this 31st day of Aug., 1868.

(Signed) J. DONALDSON, *Alderman.* [SEAL.]

1704 ALLEGHENY COUNTY, *ss:*

I, Henry Snively, Recorder of Deeds, &c., in and for said county do hereby certify that there was filed and also recorded in Book of the certificate- of organization of manufacturing and other companies, Vol. 1, page 307, in my office this day a copy of the foregoing certificate of the organization of the Standard Oil Co. under the provisions of an Act of Assembly approved July 18, 1863, and the Supplements thereto.

(5 cent Int. Rev. Stamp.)

Witness my hand and official seal this 5th day of Sep., 1868.

(Signed) HENRY SNIVELY.

Endorsed: Standard Oil Company. Certified to Governor, Sept. 9, 1868.

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, PA., *April* 5, 1907.

I Hereby Certify that the foregoing is a true copy of the original Articles of Association of the Standard Oil Company of Pittsburgh, remaining on file in this Department.

Witness my hand and seal of office, the day and year above written.

[SEAL.]

W. P. SNYDER,
Auditor General,
Per N. E. HAUSE,
Chief Clerk.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Charter S. O. Co. of Pittsburgh. (31.)

UNITED STATES OF AMERICA, *State of Indiana:*

OFFICE OF THE SECRETARY OF STATE.

(32) I, Fred A. Sims, Secretary of State of the State of Indiana hereby certify that the annexed pages contain a full true and complete copy of the articles of association, or agree-
1705 ment in writing of Standard Oil Company and certificate of Increase of Capital Stock, with the several certificates thereon, filed June 18, 1889; April 14, 1892, as the same appears on file, as the law directs, in this office.

In Testimony Whereof, I hereunto set my hand and affix the Great Seal of the State of Indiana. Done at my office in the City of Indianapolis, this 13th day of April, A. D. 1907.

[SEAL.]

FRED A. SIMS,
Secretary of State.

Certificate of Incorporation of Standard Oil Co.

The undersigned desiring to form a company to carry on manufacturing business as provided by chapter 35 of the Revised Statutes of Indiana, do make the following certificate.

1. The corporate name adopted by the company is Standard Oil Company.

2. The object of its formation is to manufacture the products of Crude Petroleum to transport and sell the same, to manufacture barrels and packages for containing said products, to erect necessary buildings and manufacture the necessary machinery and to do all business found to be necessary or convenient in carrying on the business specified.

3. The amount of capital stock of said company is fixed at Five Hundred Thousand Dollars ($500,000.00).

4. The term of existence of said company is fixed at fifty years.

5. The number of directors is fixed at five and the following are the names of the persons who shall manage the affairs of said company for the first year.

W. P. Cowan.
Frank Q. Barstow.
Ambrose M. McGregor.
George H. Vilas.
W. H. Tilford.

1706 The operations of said company shall be carried on in the town of Whiting, County of Lake and State of Indiana.

In Witness Whereof, we hereto set our hands this eleventh day of June A. D. 1889.

W. H. TILFORD.
A. M. McGREGOR.
F. Q. BARSTOW.
GEO. H. VILAS.
W. P. COWAN.

STATE OF NEW YORK, *County of New York*, ss:

Before me, James W. Hale, a Notary Public, this eleventh day of June, A. D. 1889, appeared Frank Q. Barstow, Ambrose M. McGregor, Geo. H. Vilas and W. H. Tilford to me personally known and severally acknowledged the execution of the foregoing certificate of incorporation.

JAS. W. HALE, [SEAL.]
Public Notary, 4 *Hanover Street.*

STATE OF NEW YORK, *City and County of New York*, ss:

I, Edward F. Reilly, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said city and county, the same being a court of record, do hereby certify, that Jas. W. Hale whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public in and for the City and county of New York, dwelling in the

said City, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court and county, the 11 day of June, 1889.

EDWARD F. REILLY, *Clerk.* [SEAL.]

1707 STATE OF ILLINOIS, *Cook County, ss:*

Before me James A. Marshall a notary public this 15th day of June, A. D. 1889, appeared W. P. Cowan and to me personally known to me and acknowledged the execution of the foregoing certificate of incorporation.

[SEAL.] JAMES A. MARSHALL,
Notary Public.

STATE OF ILLINOIS, *Cook County, ss:*

I, Henry Wulff, Clerk of the County Court of Cook County, the same being a court of record, do hereby certify that James A. Marshall, Esq., whose name is subscribed to the proof or acknowledgment of the annexed instrument in writing, was at the time of taking such proof or acknowledgment, a Notary Public in and for Cook County, duly commissioned, sworn and acting as such and authorized to take the same; that I am well acquainted with his handwriting and verily believe that the signature to the said proof or acknowledgment is genuine; and further that the annexed instrument is executed and acknowledged according to the laws of the State of Illinois.

In Testimony whereof, I have hereunto set my hand and affixed the seal of the said court at the City of Chicago, in the said county, this 17th day of June, 1889.

HENRY WULFF, *Clerk.* [SEAL.]

Filed June 18, 1889.

CHARLES F. GRIFFIN,
Secretary of State.

Minutes of Adjourned Annual Meeting of the Stockholders of the Standard Oil Company, held at Whiting, Indiana, Wednesday, March 16th, 1892.

The following stockholders being present: Standard Oil Trust, by proxy to W. P. Cowan, F. Q. Barstow, by proxy to Geo. W. Stahl, W. H. Tilford, by proxy to T. M. Towl, A. M. McGregor, by proxy to T. M. Towl.

1708 The meeting was called to order by W. P. Cowan, Vice President, who was chosen Chairman of the meeting. George W. Stahl, representing F. Q. Barstow by proxy, was chosen Secretary.

The following resolution was offered by Mr. Cowan:

"Resolved, that the capital stock of this company be increased to the sum of one million (1,000,000) dollars, the same to be divided

into shares of one hundred (100) dollars each, and that such increase of capital stock take effect April 2nd, 1892."

Mr. W. H. Smith was then appointed Teller and the following shares were voted:

	Number of shares.
In the Affirmative:	
Standard Oil Trust	4,995
F. Q. Barstow	1
W. H. Tilford	1
A. M. McGregor	1
W. P. Cowan	1
Total	4,999
In the Negative: None.	None.

The resolution being therefore unanimously carried.

We, W. P. Cowan, Chairman, and George W. Stahl, Secretary, do hereby certify that the foregoing is a correct copy of the record and proceedings of the adjourned annual meeting of the stockholders of the Standard Oil Company, held at Whiting, Indiana, Wednesday, March 16th, 1892, authorizing an increase of capital stock.

W. W. COWAN, *Chairman.*
GEORGE W. STAHL, *Sec'y.*

Filed 4/14/92.
CLAUDE MATTHEWS, *Secretary of State.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Charter S. O. Co. of Ind. (32.)

1709 No. 27.

UNITED STATES OF AMERICA, *State of New York:*

By John S. Whalen, Secretary of State and Custodian of the Great Seal Thereof.

It Is Hereby Certified, that James L. Whalen was, on the day of the date of the annexed Certificate and Attest-ion, Deputy Secretary of State of the State of New York, and duly authorized by the laws of said State to make such Attest-ion and Certificate and to perform the duties belonging to the Secretary of State in making such Attest-ion and Certificate, in like manner as said Secretary of State; that the said Certificate and Attest-ion are in due form and executed by the proper officer; that the seal affixed to said Certificate and Attest-ion is the seal of office of the Secretary of State of the State of New York; that the signature thereto of the said Deputy Secretary of State, is in his own proper handwriting, and is genuine; and that full faith and credit may and ought to be given to his official acts; and further, that the Secretary of State is the Custodian of the

original certificate of Increase of Capital Stock so certified and attested and Custodian of the Great Seal of said State, hereunto affixed.

In Testimony Whereof, The Great Seal of the State is hereunto affixed.

Witness my hand at the City of Albany, the sixth day of April, in the year of our Lord one thousand nine hundred and seven.

[SEAL.] JOHN S. WHALEN,
Secretary of State.

Agreement by Unanimous Consent of the Stockholders of the Standard Oil Company of New York to Increase Its Capital Stock.

We, the undersigned, being all the stockholders of the Standard Oil Company of New York, a corporation duly organized under the laws of New York, do hereby in compliance with Chap. 354 of the laws of 1901, Secs. 45 & 46 by unanimous consent authorize an increase of the capital stock of said company from the sum of Seven Million ($7,000,000) dollars, its present capital stock which
1710 is actually issued, to the sum of Fifteen Million ($15,000,000) dollars. And we hereby direct that a copy of this consent shall be entered upon the minutes of the said corporation, and also filed in the office of the Secretary of State, and in the office of the Clerk of the County of New York in which the principal business office of the said corporation is located.

In Witness Whereof, we subscribe our names hereto this — day of December, A. D. 1903.

[CORPORATE SEAL.] STANDARD OIL COMPANY,
By JNO. D. ARCHBOLD,
Vice-President.

Attest:
CHARLES T. WHITE, *Asst. Secretary.*

WM. ROCKEFELLER.
H. M. FLAGLER.
JNO. D. ARCHBOLD.
H. H. ROGERS.
W. H. TILFORD.
F. Q. BARSTOW.
E. T. BEDFORD.
J. A. MOFFETT.
W. D. McMILLAN.
JOS. H. LECOUR.
A. L. WILKINSON.
C. M. PRATT.

STATE OF NEW YORK, *County of New York, ss:*

On the 5th day of December, 1903, before me A. T. Doremus a Notary Public personally appeared Chas. T. White, who being by me duly sworn, saith; I am Assistant Secretary of the Standard Oil Company of New York, a corporation organized under the laws of New York, and I am custodian of the stock-book of said corporation. I have personally examined all the signatures subscribed to the "Agreement by Unanimous Consent of the Stockholders of the Standard Oil Company of New York to increase its capital stock," filed herewith and I hereby depose and say that said subscribers are

all the owners of all the outstanding capital stock of the said corporation.

CHARLES T. WHITE.

Sworn and subscribed before me this 5th day of December, 1903.
[SEAL.]
A. T. DOREMUS,
Notary Public, Richmond County.

Certificate filed in New York County.

1711 (Endorsed:) Agreement by unanimous consent of the stockholders of the Standard Oil Company of New York to increase its capital stock. Tax for privilege of increase of capital of this corporation. $4,000. Under Chapter 448, Laws of 1901. Paid to State Treasurer before filing. State of New York. Office of Secretary of State. Filed and Recorded Dec. 7, 1903. J. B. H. Mongin, Deputy Secretary of State.

STATE OF NEW YORK, *Office of the Secretary of State, ss:*

I have compared the preceding with the original Certificate to Increase the Capital Stock of Standard Oil Company of New York, filed and recorded in this office on the 7th day of December, 1903, and I do Hereby Certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this sixth day of April, one thousand nine hundred and seven.
[SEAL.]
JAMES L. WHALEN,
Deputy Secretary of State.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. S. O. of N. Y. Inc. (27.)

No. 28.

UNITED STATES OF AMERICA, *State of New York:*

By John S. Whalen, Secretary of State and Custodian of the Great Seal Thereof.

It Is Hereby Certified, that James L. Whalen was, on the day of the date of the annexed Certificate and Attestation, Deputy Secretary of State of the State of New York, and duly authorized by the laws of said State to make such Attestation and Certificate and to perform the duties belonging to the Secretary of State in making such
1712 Attest-ion and Certificate, in like manner as said Secretary of State; that the said Certificate and Attest-ion are in due form and executed by the proper officer; that the seal affixed to said Certificate and Attest-ion is the seal of office of the Secretary of State of the State of New York; that the signature thereto of the said Deputy Secretary of State, is in his own proper handwriting, and is

genuine; and that full faith and credit, may and ought to be given to his official acts; and, further, that the Secretary of State is the Custodian of the Original Certificate of Increase of Number of Directors so certified and attested and Custodian of the Great Seal of said State, hereunto affixed.

In Testimony Whereof, the Great Seal of the State is hereunto affixed.

Witness my hand at the city of Albany, the sixth day of April, in the year of our Lord one thousand nine hundred and seven.

[SEAL.] JAMES S. WHALEN,
Secretary of State.

No. 28.

Meeting of the Stockholders of Record of the Standard Oil Company of New York, held at 26 Broadway, New York, on the 31st day of March, A. D. 1892.

A writing signed by all the stockholders of record admitting thirty days' notice of the meeting and its purposes was presented and filed. J. D. Archbold was elected Chairman and L. D. Clarke as Secretary.

The following resolutions was offered:

Resolved: That the number of Directors of this company be increased to nine.

A vote was taken by ballot and the tellers announced that 49,998 shares of stock were voted in favor of the resolution and none against, whereupon the Chairman announced that the stockholders owning a majority of the stock of the company had voted in favor of
1713 the resolution, and it was thereupon adopted. On motion the meeting adjourned.

JNO. D. ARCHBOLD, *Chairman.*
L. D. CLARKE, *Secretary.*

STATE OF NEW YORK, *County of New York, ss:*

J. D. Archbold and L. D. Clarke being duly sworn say that they were the Chairman and Secretary of the meeting above referred to and that the foregoing is a correct transc-ipt of the minutes of said corporate meeting.

JNO. D. ARCHBOLD.
L. D. CLARKE.

Sworn and subscribed before me this 31st day of March, 1892.

[SEAL.] MARTIN JUDGE,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

(Copied by M. E. L. Compared by E. M. & O.)

Endorsed: Certificate of Increase of Directors Standard Oil Co. of N. Y. State of New York. Office of Secretary of State, Filed and Recorded Apr. 9, 1892. Th. E. Benedict, Deputy Secretary of State.

STATE OF NEW YORK, *Office of the Secretary of State, ss:*

I have compared the preceding with the original Certificate to Increase the number of Directors of Standard Oil Company of New York, filed and recorded in this office on the 9th day of April, 1892, and I do Hereby Certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of office of the Secretary of State at the City of Albany, this sixth day of April, one thousand nine hundred and seven.

[SEAL.]

JAMES L. WHALEN,
Deputy Secretary of State.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. S. O. of N. Y. Inc. (28)

1714 No. 34.

UNITED STATES OF AMERICA, *State of New York:*

By John S. Whalen, Secretary of State and Custodian of the Great Seal Thereof.

It is Hereby Certified that James L. Whalen was, on the day of the date of the annexed Certificate and Attest-ion, Deputy Secretary of State of the State of New York, and duly authorized by the laws of said State to make such Attest-ion and Certificate and to perform the duties belonging to the Secretary of State in making such Attest-ion and Certificate, in like manner as said Secretary of State; that the said Certificate and Attest-ion are in due form and executed by the proper office-; that the seal affixed to said Certificate and Attest-ion is the seal of office of the Secretary of State of the State of New York; that the signature thereto of the said Deputy Secretary of State is in his own proper handwriting, and is genuine; and that full faith and credit, may and ought to be given to his official acts; and, further, that the Secretary of State is the Custodian of the Original Certificate of Extension of Corporate Powers, so certified and attested and Custodian of the Great Seal of said State, hereunto affixed.

In Testimony Whereof, the Great Seal of the State is hereunto affixed.

Witness my hand at the City of Albany, the sixth day of April in the year of our Lord one thousand nine hundred and seven.

[SEAL.]

JOHN S. WHALEN,
Secretary of State.

Certificate of Extension of Business of the Standard Oil Company of New York.

We, the undersigned, a majority of the trustees of the Standard Oil Company of New York, a stock corporation organized under and pursuant to the Act of the Legislature of the State of New
1715 York, entitled "An Act to authorize the formation of Corporations for Manufacturing, Mining, Mechanical or Chemical

purposes," passed the 17th of February, A. D. 1848, and the several acts amendatory thereof and supplimental thereto; desiring to extend its business and powers, pursuant to the provisions of the Stock Corporation Law of the State of New York, do hereby make and file this amended certificate for such purpose, and do certify as follows:

That the name of the corporation, whose business and powers are hereby extended is Standard Oil Company of New York.

That the business for which it was incorporated, and is now carrying on, is the business of the refining of petroleum; the manufacturing of the various products thereof, the purchasing of the crude material and the sale of the manufactured products thereof, the manufacture of barrels, boxes, cans, and other packages in which the manufactured products may be kept or transported, the manufacture and restoration of acids and whatever other substances may be used in the manufacture of petroleum.

That the extension of business, and powers, and rights purposed and intended to be effected by the execution and filing of this certificate, includes the following purposes and powers, to-wit:

The purchase and sale of the products of petroleum, and of all products entering into the manufacture thereof, and the purchase and sale of utensils and packages in which said products and materials are used, stored and transported, and of the materials used in the manufacture of such utensils and packages; said business of buying and selling to be done in all countries in which markets may be found; also the purchasing, acquiring, holding and disposing of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, engaged in a similar business or engaged in the manufacture or sale of property useful in the business of this corporation or in which the manufactured articles, product or property of this Corporatoin are or may be used.

1716 The amount of Capital Stock of said Company shall be Seven Million Dollars.

The Term of existence of said Company shall be fifty years from the date of the original certificate.

The said Capital Stock shall be divided into Seventy Thousand Shares of One Hundred Dollars each.

The number of Trustees who shall manage the concerns of the Company shall be nine.

The following persons are Directors:

William Rockefeller.	W. H. Tilford.
John D. Rockefeller.	A. M. McGregor.
H. M. Flagler.	Paul Babcock.
John D. Archbold	C. M. Pratt.
H. H. Rogers.	

The principal place of business of said Company shall be New York City. The manufacturing shall be carried on in Brooklyn, Long Island City and at other points in the State of New York, with the right to establish branch manufactories in other states and countries.

That the aforesaid extension has been duly authorized by a vote of stockholders representing at least three fifths of the capital stock

1053

of said corporation, at a meeting of the stockholders, called for the purpose, in the manner provided in section 45 of the Stock Corporation Law, as more fully appears in a copy of the proceedings of such meeting, verified by the affidavit of one — the directors present thereat, annexed hereto and filed with this amended certificate.

In Witness Whereof, we have made and executed this certificate in duplicate, and have hereunto set our hands this 21st day of March, 1898.

WM. ROCKEFELLER.
HENRY H. ROGERS.
JNO. D. ARCHBOLD.
W. H. TILFORD.
JOHN D. ROCKEFELLER.
PAUL BABCOCK.

1717 STATE OF NEW YORK, *County of New York, ss:*

On this 22d day of March, 1898, before me personally came William Rockefeller, Henry H. Rogers, John D. Archbold, W. H. Tilford, John D. Rockefeller and Paul Babcock, to me severally known to be the persons described in and who made and signed the foregoing certificate and severally duly acknowledged to me that they had made, signed and executed the same for the uses and purposes therein set forth.

[SEAL.]

JOHN BENSINGER,
Notary Public for Kings Co.

Certificate Filed in New York Co.

A special meeting of the stockholders of this company was held at the principal office of the company, No. 26, Broadway, New York City, on Thursday, March 17th, 1898, at 11 o'clock in the forenoon, for the purposes of considering a proposition to extend the business and powers and rights of the corporation.

The meeting having been called to order, stockholders appeared in person or by proxy representing 42,731 shares of stock, being at least three-fifths of the capital stock of the corporation, and organized by electing John D. Archbold and Louis D. Clarke, stockholders of the corporation, as Chairman and Secretary, respectively, of said meeting.

The Chairman read the notice of the meeting, which notice stated the time, place and object thereof, and the proposed extension of the business and powers and rights of the corporation, and also read the proof that such notice was published once a week for at least two successive weeks in the New York Law Journal, a newspaper of the County of New York, the County where the principal business office of the corporation is located, and that a copy of such meeting was duly mailed to each stockholder at his last known postoffice address at least three weeks before the meeting.

1718 Upon motion, duly seconded, Messrs. Alfred H. Brainard and Frederick Fischer were appointed Inspectors of Election

and duly sworn to faithfully perform the duties devolving upon them as such Inspectors.

Upon motion, duly seconded, a vote was taken upon the following resolution:

Resolved That the business and rights of the Standard Oil Company of New York be extended as follows: "The purchase and sale of the products of petroleum, and of all products entering into the manufacture thereof, and the purchase and sale of utensils and packages in which said products and materials are used, stored, and transported, and of the materials used in the manufacture of such utensils and packages, said business of buying and selling to be done in all countries in which markets may be found; also the purchasing, acquiring, holding and disposing of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, engaged in a similar business, or engaged in the manufacture or sale of property useful in the business of this corporation, or in which the manufactured articles, product or property of this corporation are or may be used, with the right to establish branch manufactories in other states and countries", and that the board of Directors of this corporation be authorized and instructed to execute and file proper certificates, as provided by law, and *and* to take such other steps as may be necessary to carry out and effect the objects and purposes of this resolution.

The Inspectors having counted the ballots reported that forty-two thousand seven hundred thirty-one (42,731) shares of stock, being more than three-fifths of the capital stock of the company, had voted in favor of the adoption of the resolution, and that no vote had been cast against its adoption, and thereup- the resolution was declared duly adopted, and the meeting adjourned.

JOHN D. ARCHBOLD, *Chairman.*
LOUIS D. CLARKE, *Secretary.*

1719 STATE OF NEW YORK, *County of New York, ss:*

John D. Archbold, being duly sworn, says that he is one of the directors of the Standard Oil Company of New York, and was present at a special meeting of the stockholders of said company, held at its office, at 26 Broadway, New York City, at eleven o'clock in the forenoon, and that the foregoing is a true copy of the proceedings of such special meeting and of the whole thereof.

JNO. D. ARCHBOLD.

Sworn to before me this 22 day of March, 1898.
[SEAL.] JOHN BENSINGER,
Notary Public for Kings Co.

Certificate filed in New York Co.

Notice of Meeting.

Notice is hereby given that a special meeting of the stockholders of the Standard Oil Company of New York will be held at 26 Broadway, New York City, on Thursday, March 17th, 1898, at eleven

o'clock A. M., to act upon a proposition to authorize an extension of the business, and power, and rights of said corporation, so as to include; "The purchase and sale of the products of petroleum, and of all products entering into the manufacture thereof, and the purchase and sale of utensils and packages in which said products and materials are used, stored and transported, and of the materials used in the manufacture of such utensils and packages; said business of buying and selling to be done in all countries in which markets may be found; also the purchasing, acquiring, holding and disposing of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, engaged in a similar business or engaged in the manufacture or sale of property useful in the business of this Corporation or in which the manufactured articles, product or
1720 property of this corporation are or may be used, with the right to establish branch manufactories in other states and countries," in addition to those now set forth in the certificate of incorporation of said corporation.

Dated, 26 Broadway, New York, February 19th, 1898.

JNO. D. ARCHBOLD,
HENRY H. ROGERS,
WM. ROCKEFELLER,
Directors.

STATE OF NEW YORK, *County of New York, ss:*

Louis D. Clarke, being duly sworn, says, that on the 19th day of February, 1898, he deposited in the post office at the City of New York, a copy of the annexed notice to stockholders of the Standard Oil Company of New York, contained in a duly post paid wrapper directed to each stockholder of said Company at his last known post office address, and further that he caused said notice to be published in The New York Law Journal, a newspaper printed and published in the City of New York, once a week for two successive weeks, commencing on March 5th, 1898.

LOUIS D. CLARKE.

Sworn to before me this 22 day of March 1898.
[SEAL.]
JOHN BENSINGER,
Notary Public, for Kings County.

Certificate filed in New York Co.

(Endorsed:) Certificate of Extension of Business of the Standard Oil Company of New York. State of New York. Office of Secretary of State, Filed and Recorded Mar. 23, 1898. Andrew Davidson, Deputy Secretary of State.

STATE OF NEW YORK, *Office of the Secretary of State, ss:*

I have compared the preceding with the original Certificate of Extension of Corporate Powers of Standard Oil Company of
1721 New York, filed and recorded in this office on the 23rd day of March, 1898, and do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this sixth day of April, one thousand nine hundred and seven.

[SEAL.] JAMES L. WHALEN,
Deputy Secretary of State.

Copied by M. E. L. Compared by A. H. & O.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. S. O. of N. Y. Amend. (34.)

No. 35.

UNITED STATES OF AMERICA, *State of New York:*

By John S. Whalen, Secretary of State and Custodian of the Great Seal Thereof.

It Is Here- Certified that James L. Whalen, was, on the day of the date of the annexed Certificate and Attest-ion, Deputy Secretary of State of the State of New York, and duly authorized by the laws of said state to make such attestation and certificate and to perform the duties belonging to the Secretary of State in making such Attest-ion and Certificate, in like manner as said Secretary of State; that the said Certificate and Attest-ion are in due form and executed by the proper officer; that the seal affixed to said Certificate and Attest-ion is the seal of office of the Secretary of State of the State of New York; that the signature thereto of the said Deputy Secretary of State is in his own proper handwriting, and is genuine; and that full faith and credit may and ought to be given to his official acts; and, further, that the Secretary of State is the Custodian of the Original Certificate of Incorporation, so certified and attested and Custodian of the Great Seal of said State, hereunto affixed.

In Testimony Whereof, The Great Seal of the State is hereunto affixed.

1722 Witness my hand at the City of Albany, the sixth day of April, in the year of our Lord one thousand nine hundred and seven.

[SEAL.] JOHN S. WHALEN,
Secretary of State.

Certificate of Incorporation of the Standard Oil Company of New York.

We, Wm. Rockefeller, J. A. Bostwick, Benj. Brewster, O. B. Jennings and Charles Pratt, being desirous to form a company under and pursuit to the Act of the Legislature of the State of New York, entitled, "An Act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed 17th February, A. D. 1848, and the several acts amendatory thereof and supplemental thereto.

Do Here- Certify:

1st. The corporate name of said Company shall be "Standard Oil Company."

2nd. The objects for which the said Company shall be formed are the refining of petroleum; the manufacturing of the various products thereof, the purchasing of the crude material and the sale of the manufactured products thereof; the manufacture of barrels, boxes, cans and other packages in which the manufactured products may be kept or transported; the manufacture and restoration of acids and whatever other substances may be used in the manufacture of the products of petroleum.

3rd. The amount of Capital Stock of said Company shall be Five Million Dollars.

4th. The term of existence of said Company shall be fifty years from the date of this certificate.

5th. The said Capital Stock shall be divided into Fifty Thousand Shares of One Hundred Dollars each.

6th. The number of Trustees who shall manage the concerns of the company shall be five.

1723 The following persons are named as Trustees for the first year, viz: Wm. Rockefeller, J. A. Bostwick, Benj. Brewster, O. B. Jennings and Chas. Pratt.

7th. The principal place of business of said company shall be New York City. The manufacturing shall be carried on in Brooklyn, Long Island City and at other points in the State of New York.

8th. A portion of the stock of said company shall be issued for the purchase of various refineries and manufactories now existing in the State of New York, belonging to the Standard Oil Company of Cleveland, Ohio, and other refining and manufacturing companies.

In Witness Whereof, the said parties have hereunto set their hands and seals this first day of August, 1882.

WM. ROCKEFELLER. [SEAL.]
J. A. BOSTWICK. [SEAL.]
BENJ. BREWSTER. [SEAL.]
O. B. JENNINGS. [SEAL.]
CHAS. PRATT. [SEAL.]

STATE OF NEW YORK, *City of New York, ss:*

On this seventh day of August, A. D. 1882, before me, Jas. W. Hale, a Notary Public in and for the City of New York, personally came, Wm. Rockefeller, J. A. Bostwick, Benj. Brewster, O. B. Jennings and Chas. Pratt, to me known to be the individuals described in and who executed the above instrument, and acknowledged that they executed the same for the purposes therein mentioned.

Witness my hand and seal the day and year aforesaid.

[SEAL.]

JAS. W. HALE,
Notary Public, 4 Hanover Street.

Endorsed: Certificate of Incorporation of the Standard Oil Company of New York. State of New York, Office of Secretary of State, Filed and Recorded Aug. 10, 1882. Anson S. Wood, Deputy Secretary of State.

1724 STATE OF NEW YORK, *Office of the Secretary of State, ss:*

I have compared the preceding with the original Certificate of Incorporation of "Standard Oil Company of New York", filed and recorded in this office on the 10th day of August, 1882, and do Hereby Certify the same to be a correct transcript therefrom and the whole of said original.

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this sixth day of April, one thousand nine hundred and seven.

[SEAL.] JAMES L. WHALEN,
Deputy Secretary of State.

Copied by M. E. L. Compared by A. H. & O.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Charter S. O. of N. Y. (35)

No. 36.

UNITED STATES OF AMERICA, *State of New York:*

By John S. Whalen, Secretary of State and Custodian of the Great Seal Thereof.

It is Hereby Certified, That James L. Whalen was, on the day of the date of the annexed Certificate and Attest-ion, Deputy Secretary of State of the State of New York, and duly authorized by the laws of said State to make such Attest-ion and Certificate and to perform the duties belonging to the Secretary of State in making such Attest-ion and Certificate, in like manner as said Secretary of State; that the said Certificate and Attest-ion are in due form and executed by the proper officer; that the seal affixed to said Certificate and Attest-ion is the seal of office of the Secretary of State of the State of New York; that the signature thereto of the said Deputy Secreary of State, is in his own proper handwriting, and is genuine; and that full faith and credit, may and
1725 ought to be given to his official acts, and, further, that the Secretary of State is the Custodian of the Original Certificate of Increase of Capital Stock, so certified and attested and Custodian of the Great Seal of said State, hereunto affixed.

In Testimony Whereof, the Great Seal of the State is hereunto affixed.

Witness my hand at the City of Albany, the sixth day of April, in the year of our Lord one thousand nine hundred and seven.

[SEAL.] JOHN S. WHALEN,
Secretary of State.

STATE OF NEW YORK, *City of New York, ss:*

We, J. D. Archbold, Chairman, and L. D. Clarke, Secretary, of a special meeting of the stockholders of the Standard Oil Company of New York held for the purpose of increasing the capital stock do hereby certify:

That the Standard Oil Company of New York is a stock corporation formed under the laws of the State of New York, and that the capital stock of said company was fixed by its certificate of incorporation at Five Million Dollars and was divided into fifty thousand shares of the par value of One Hundred Dollars each.

That the said Company desiring to increase its capital stock the Directors thereof did publish a notice signed by a majority of them in the Evening Sun, a newspaper in the City of New York, in which said City the principal business office of said Company is situated, once a week for three successive weeks prior to the date of the meeting called thereby, which said notice was in the words following:

NEW YORK, *March 18th*, 1892.

A special meeting of the stockholders of the Standard Oil Company of New York will be held at the office of the said Company at No. 26 Broadway, New York City, on the 31st day of March,
1726 A. D. 1892, at 11 o'clock A. M. to determine whether the capital stock of the Company shall be increased to the total amount of Seven Million Dollars to consist of seventy thousand shares of the par value of One Hundred Dollars each.

WILLIAM ROCKEFELLER,
JOHN D. ARCHBOLD,
W. H. TILFORD,
Directors.

That at least three weeks before said meeting a copy of said notice was personally served upon each stockholder.

That at the time and place specified in the notice published and served as aforesaid there appeared in person and by proxy stockholders representing at least two-thirds of all the shares of stock of the said Company, and that the meeting organized by choosing from among their number the said J. D. Archbold as Chairman, and the said L. D. Clarke, as Secretary thereof.

That the call for the meeting having been read, and the proof of the proper publishing and service thereof having been presented, the following resolution was adopted.

Resolved: That the Standard Oil Company of New York does increase its capital stock from the present amount thereof, viz, the sum of Five Million Dollars consisting of fifty thousand shares of the par value of One Hundred Dollars per share, to the amount of Seven Million Dollars to consist of seventy thousand shares of the par value of One Hundred Dollars per share, and that the officers of this meeting are hereby instructed to perfect such increase of capital.

That the note of those present in person and by proxy upon said resolution being duly canvassed, it appeared that 49,998 shares of the capital stock of said Company being more than two-thrids of all the stock thereof voted in favor of said resolution.

And we do further certify:

That the amount of the capital of the said Company actually paid in is Five Million of Dollars; and that the whole amount of
1727 the debts and liabilities of the corporation is $1,856,639.23 dollars; and that the amount to which the capital stock of said company is increased in Seven Million Dollars.

In witness whereof We have made and signed this certificate this 31st day of March A. D. 1892.

JNO. D. ARCHBOLD, *Chairman.*
L. D. CLARKE, *Secretary.*

Sworn before me this 31 day of March A. D. 1892.

[SEAL.] MARTIN JUDGE,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

STATE OF NEW YORK, *City of New York, ss:*

On this thirty-first day of March A. D. 1892, before me personally came J. D. Archbold and L. D. Clarke, to *be* personally known to be the individuals described in and who executed the foregoing certificate, and they acknowledged to me that they executed the same.

Witness my hand and seal this 31st day of March A. D. 1892.

[SEAL.] MARTIN JUDGE,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

(Endorsed:) Certificate of Increase of Capital Stock Standard Oil Company of New York. Tax for privilege of increase of Capital of this Corporation. $2,500.00. Under Chapter 143, Laws of 1886. Paid to State Treasurer before filing. State of New York, Office of Secretary of State. Filed and Recorded Apr. 9, 1892. Th. E. Benedict, Deputy Secretary of State.

STATE OF NEW YORK, *Office of the Secretary of State, ss:*

I have compared the preceding with the original Certificate to Increase the Capital Stock of Standard Oil Company of New York, filed and recorded in this office on the 9th day of April 1892, and I do Hereby Certify the same to be a correct transcript therefrom and of the whole thereof.

1728 Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this sixth day of April, one thousand nine hundred and seven.

[SEAL.] JAMES L. WHALEN,
Deputy Secretary of State.

Copied by M. E. L. Compared by A. H. & O.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. S. O. of N. Y. Inc. (36.)

No. 37.

UNITED STATES OF AMERICA, *State of New York:*

By John S. Whalen, Secretary of State and Custodian of the Great Seal Thereof.

It is hereby certified, That James L. Whalen was, on the day of the date of the annexed Certificate and Attest-ion, Deputy Secretary of State of the State of New York, and duly authorized by the laws of said State to make such Attest-ion and Certificate and to perform the duties belonging to the Secretary of State in making such Attest-ion and Certificate, in like manner as said Secretary of State; that the said Certificate and Attest-ion are in due form and executed by the proper officer; that the seal affixed to said Certificate and Attest-ion is the seal of office of the Secretary of State of the State of New York; that the signature thereto of the said Deputy Secretary of State, is in his own proper handwriting and is genuine; and that full faith and credit, may and ought to be given to his official acts; and, further, that the Secretary of State is the Custodian of the Certified Copy of Certificate of Reduction of Number of Directors so certified and attested and Custodian of the Great Seal of said State, hereunto affixed.

In testimony whereof, The Great Seal of the State is hereunto affixed.

Witness my hand at the City of Albany, the sixth day of April, in the year of our Lord one thousand nine hundred and seven.

1729 [SEAL.] JOHN S. WHALEN,
Secretary of State.

We, William Rockefeller, Charles Pratt, John D. Archbold and W. H. Tilford, constituting a morjority of the Trustees of the Standard Oil Company of New York, a corporation duly created and formed under and in pursuance of an Act of the Legislature of the State of New York, entitled "An Act relative to incorporations for manufacturing purposes," in order to reduce the number of trustees of said company from five as at present constituted, to three, in the manner provided by Chapter 316 of the laws of 1878, do hereby certify and declare that the said corporation shall have three trustees in the future management of its business, the number being reduced from five to three as aforesaid.

WM. ROCKEFELLER.
CHAS. PRATT.
JOHN D. ARCHBOLD.
W. H. TILFORD.

STATE OF NEW YORK, *City and County of New York, ss:*

On this 26th day of November, A. D. 1890, personally appeared before me, a Notary Public in and for said City and County, William Rockefeller, Charles Pratt, John D. Archbold and W. H. Tilford directors of the Standard Oil Company of New York, to me person-

ally known and known to me to be the individuals described in and who signed the foregoing certificate, and severally acknowledged the same for the purposes therein mentioned.

Witness my hand and official seal this 26th day of November A. D. 1890.

[SEAL.] S. MARSHALL BUSSELLE,
Notary Public, New York.

Filed and Recorded 26th Nov. 1890 2h. 21 M.

STATE OF NEW YORK, *City and County of New York, ss:*

I, P. Joseph Scully, Clerk of the said City and County, and
1730 Clerk of the Supreme Court of said State for said County, Do Certify That I have compared the preceding with the original certificate to reduce number of the directors of the Standard Oil Co. of New York.

Filed and Recorded Nov. 26th, 1890 2h. 21 M. on file in my office, and that the same is a correct transcript therefrom and the whole of such original.

In witness whereof, I have hereunto subscribed my name, and affixed my official seal, this 28th of November 1890.

[SEAL.] P. JOSEPH SCULLY, *Clerk.*

(Endorsed:) Certificate to Reduce number of the directors of The Standard Oil Co. of New York. State of New York. Office of Secretary of State. Filed and Recorded Dec. 5, 1890. Th. E. Benedict, Deputy Secretary of State.

STATE OF NEW YORK, *Office of the Secretary of State, ss:*

I have compared the preceding with the Certified Copy of Certificate to reduce the number of Directors of Standard Oil Company of New York, filed and recorded in this office on the 5th day of December, 1890, and I do Hereby Certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this sixth day of April, one thousand nine hundred and seven.

[SEAL.] JAMES L. WHALEN,
Deputy Secretary of State.

(M. H. O. A. H. & O.)

Endorsed: No. 24551. The State of Texas *vs.* The Waters Pierce Oil Co. Filed May 31, 1907. D. J. Pickle, Clerk. S. O. of N. Y. Amend. (37.)

1731

No. 14.

Amendment to Charter.

The Atlantic Refining Company.

To His Excellency, Robert E. Pattison, Governor of Pennsylvania.

SIR: In compliance with the authority and requirements of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "A supplement to an act entitled 'An Act to provide for the incorporation and regulation of certain corporations.' approved April 29, one thousand eight hundred and seventy-four, providing for the improvement, amendment and alteration of the charters of corporations of the second class and authorizing the incorporation of traction motor companies," approved June 13, 1883, and known as the Corporation Amendment Act of 1883, The Atlantic Refining Company hereby certifies under its corporate seal that it is a corporation organized originally under the Act of Assembly entitled "An Act relating to corporations for mechanical, mining and quarrying purposes," approved July 18 1863; That it subsequently, to-wit, on the eighth day of October, A. D. 1889, by certificate filed in the office of the Secretary of the Commonwealth at Harrisburg, accepted the Constitution of 1874 and the General Corporation Act of 1874 and its supplements, as by reference to the records of the office of the Secretary of the Commonwealth will more fully appear; that said corporation hereby applies for an improvement, amendment and alteration of its charter by adding thereto the following provision, to-wit:

The Directors may authorize the lease or sale and conveyance by deed under the seal of the corporation of any real estate of said company or interests therein which in their opinion is at the time of such lease or sale not necessary for the carrying on of the business of the company.

In Witness Whereof the said corporation hereunto affixes its corporate seal attested by the signature of its President and Secretary this tenth day of June, A. D. 1893.

JAS. McGEE, *President.*

Attest:
[SEAL.] C. E. BUSHNELL, *Sec'y.*

1732 COMMONWEALTH OF PENNSYLVANIA,
City and County of Philadelphia, ss:

Be it remembered that on this 10" day of June, A. D. 1893, personally appeared before me, the Recorder of Deeds in and for said City and County, James McGee, President, and Charles E. Bushnell, Secretary of the Atlantic Refining Company, a corporation of said Commonwealth, having its principal office in the City of Philadelphia, and acknowledged that the foregoing certificate was and is the act and deed of said Atlantic Refining Company, and being by me respectively sworn the said deponents say that the

seal affixed thereto is the corporate seal of said company, that said James McGee is the President and Charles E. Bushnell is the Secretary of said Company, that their signatures as said officers are in their handwriting respectively, and that said seal and signatures were affixed to said certificate by order of the Board of Directors of said Company.

JAS. McGEE.
C. E. BUSHNELL.

Acknowledged sworn and subscribed before me this tenth day of June, A. D. 1893.

[SEAL.] JOS. K. FLETCHER,
Deputy Recorder.

EXECUTIVE CHAMBER.
HARRISBURG, *June 24th*, 1893.

Hon. William F. Harrity, Secretary of the Commonwealth:

Having examined the within application and found it to be in proper form, and that the improvements, amendments or alterations therein asked for will be lawfully and beneficial and not injurious to the community, and are in accord with the purposes of the charter I hereby approve the same, and direct that Letters Patent issue in the usual form according to law.

ROB'T E. PATTISON, *Governor.*

SECRETARY'S OFFICE, *Pennsylvania, ss:*

Enrolled in Charter Book No. 36, page 559.

1733 Witness my hand and seal of office, at Harrisburg, this twenty-fourth day of June, A. D. 1893.

[SEAL.] A. L. TILDEN,
Deputy Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I do hereby certify, That the foregoing and annexed is a full, true and correct copy of an amendment to the charter of the Atlantic Refining Company, as the same appears of record in this office.

In testimony whereof, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and year above written.

[SEAL.] LEWIS E. BEITLER,
Deputy Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, do

Hereby Certify, That the attest-ion or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler, whose name is subscribed thereto, was at the time of subscribing the same, Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioner, and full faith and credit are due and ought to be given to his official acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said officer, who authenticates the same.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

[SEAL.]

ROBERT McAFEE,
Secretary of the Commonwealth.

1734 Endorsed: Filed May 31, 1907. D. J. Pickle, Clerk. Atl. Ref. Co. (14).

No. 15.

(*Amendment.*)

Atlantic Refining Company.

Know all men by these presents, That the Atlantic Refining Company, a corporation of the State of Pennsylvania, being desirous of amending its charter in accordance with the provisions of the Corporation Amendment Act, approved the 13th day of June, 1883, and having obtained the authority of its stockholders to make such amendment, by virtue of a resolution of said stockholders adopted at a meeting held in Philadelphia on the twenty-first day of October, A. D. 1889, does hereby certify, That the charter of said corporation shall be and hereby is amended by striking out from its present Articles of Association or charter all of the second paragraph thereof in which is stated the purposes for which said corporation is established and inserting in lieu thereof the following:

The purposes for which this corporation is established is the manufacture of illuminating and lubricating oils and all other products of petroleum the manufacture of packages for holding the same and all the business necessarily incident thereto.

In witness whereof, The Atlantic Refining Company does hereto affix its corporate seal attested by the signature of its proper officers this thirteenth day of October, A. D. 1889.

WILLIAM G. WARDEN, *Pres't.*

[SEAL.] C. E. BUSHNELL, *Sec'y.*

COMMONWEALTH OF PENNSYLVANIA, *Philadelphia County, ss:*

On this thirtieth day of October, A. D. 1899, before me the Recorder of Deeds in and for said County, personally appeared

William G. Warden, President, and Charles E. Bushnell,
1735 Secretary of the Atlantic Refining Company, who being by me duly sworn say that they are respectively the President and Secretary of said Company, that they know the corporate seal of said company, that the seal affixed to the foregoing certificate is such corporate seal, that it was affixed by order of the Board of Directors of said Company, and that they respectively signed their names thereto as President and Secretary by like order.

W. G. WARDEN, *Pres't.* [SEAL.]
C. E. BUSHNELL, *Sec'y.* [SEAL.]

Witness my hand and seal this day and year aforesaid.

[SEAL.] GEO. G. PIERIE, *Recorder.*

EXECUTIVE CHAMBER,
HARRISBURG, *November* 14, 1889.

Hon. Charles W. Stone, Secretary of the Commonwealth:

Having examined the within application and found it to be in proper form, and that the improvements, amendments or alterations therein asked for will be lawful and beneficial, and not injurious to the community, and are in accord with purposes of the charter, I hereby approve the same, direct that Letters Patent issue in the usual form according to law.

JAMES A. BEAVER, *Governor.*

SECRETARY'S OFFICE.

PENNSYLVANIA, *ss:*

Enrolled in Charter Book No. 24, page 256.

Witness my hand and seal of office, at Harrisburg, this fourteenth day of November A. D. 1889.

[SEAL.] CHARLES W. STONE,
Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I do hereby certify That the foregoing and annexed is a full true and correct copy of an amendment to the charter of the Atlantic Refining Company, as the same appears of record in this office.

1736 In testimony whereof, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and year above written.

[SEAL.] LEWIS E. BEITLER,
Deputy Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, Do Hereby Certify, that the attest-ion or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler, whose name is subscribed thereto, was at the time of subscribing the same, Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said officer, who authenticates the same.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed the day and year above written.

[SEAL.]

ROBERT McAFEE,
Secretary of the Commonwealth.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Atl. Ref. Co. (15).

No. 16.

Atlantic Refining Company.

President's Return on Increase of Cap. Stock.

To the Honorable Wm. F. Harrity, Secretary of the Commonwealth of Pennsylvania:

This is to certify that by virtue of the consent of the
1737 stockholders of the Atlantic Refining Company, authorizing an increase in the capital stock thereof from four hundred thousand dollars to five million dollars, given at an election duly held for that purpose on the 18th day of May A. D. 1892, the capital stock of said company has been increased from $400,000 to $5,000,000, and the stock representing such increase has been issued.

Said additional stock was issued for the purchase of real and personal property heretofore belonging to the Standard Oil Company of Pittsburgh, The Eclipse Lubricating Oil Company, Limited, The Imperial Refining Company, Limited, The Acme Oil Company and The Electric Light Oil Company, said property being of the cash value of $4,600,000.

ATLANTIC REFINING CO.,
By JAS. McGEE, *President.*

STATE OF NEW YORK, *City and County of New York, ss:*

James McGee being duly sworn according to law deposes and says that he is President of the Atlantic Refining Company, and that the facts set forth in the foregoing certificate are true.

JAMES McGEE.

Sworn and subscribed before me, this 11th day of June A. D. 1892.

[SEAL.] S. MARSHALL BUSSELLE,
Notary Public, N. Y. C.

Filed in the office of the Secretary of the Commonwealth on the 13th day of June, A. D. 1892.

A. L. TILDEN,
Deputy Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I Do Hereby Certify, That the foregoing and annexed is a full, true and correct copy of the President's Retu*n*r on Increase of Capital Stock of the Atlantic Refining Company, as the same appears of record and remains on file in this office.

1738 In Testimony Whereof I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and year above written.

[SEAL.] LEWIS E. BEITLER,
Deputy Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, Do Hereby Certify, that the attest-ion or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler whose name is subscribed thereto, was at the time of subscribing the same, Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said office, who authenticates the same.

In Testimony Whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

[SEAL.] ROBERT McAFEE,
Secretary of the Commonwealth.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Atl. Ref. Co. (16).

No. 18.

Election Return on Increase Cap. Stock.

Atlantic Refining Company.

OFFICE OF THE ATLANTIC REFINING COMPANY,
PHILADELPHIA, PA., *May 18th*, 1892.

I, C. E. Bushnell, Secretary of the Atlantic Refining Company do hereby certify that the following is a correct copy of a
1739 resolution adopted by the Board of Directors of said Company at a special meeting held for the purpose of considering the same at the office of the company in the City of Philadelphia, State of Pennsylvania, on the 17th day of March, A. D. 1892.

Resolved That a special meeting of the shareholders of the Atlantic Refining Company be called to meet at the office of the Company in Philadelphia, at twelve o'clock noon May 18th, 1892, to vote upon a proposition to increase the capital stock of the company to five million dollars, and that notice of said meeting be published in accordance with law.

Attest: C. E. BUSHNELL, *Secretary.*

Notice to Stockholders.

A special meeting of the stockholders of the Atlantic Refining Company will be held at the office of the Company S. E. Cor. Fourth and Chestnut Streets, Philadelphia, on Wednesday, May 18th, 1892, at twelve o'clock noon for the purpose of voting upon a proposition to increase the capital stock of the company to five million dollars.

C. E. BUSHNELL, *Secretary.*

Proof of Publication of Notice.

STATE OF PENNSYLVANIA, *City and County of Philadelphia, ss:*

C. W. McLearn, being duly sworn doth depose and say that he is a clerk; that a notice of which the one hereto attached is a copy was published in the Public Ledger a newspapers of general circulation printed and published in the City of Philadelphia, State of Pennsylvania, on the 18th and 25th days of March, 1st, 8th, 15th, 22nd and 29th days of April, and on the 6th and 13th days of May A. D. 1892.

C. W. McLEARN.

1740 Sworn and subscribed before me this 18th day of May, A. D. 1892.

[SEAL.]

OTIS EGAN,
Notary Public.

STATE OF PENNSYLVANIA, *City and County of Philadelphia, ss:*

Personally appeared before me, a Notary Public in and for the City and County aforesaid E. P. Cooper, George H. Perkins, and Wm. D. Cotton, judges duly appointed by the Board of Directors of the Atlantic Refining Company to conduct an election of said company to be held at the office of the company in the City of Philadelphia, State of Pennsylvania, at twelve o'clock noon May 18th, A. D. 1892, to determine whether the stockholders of said company will assent to the increase of the capital stock thereof from four hundred thousand dollars to five million dollars, who being duly affirmed do depose and say that they will well and truly, according to law, conduct said election and true return make of the same.

E. P. COOPER.
GEORGE H. PERKINS.
WM. D. COTTON.

Affirmed and subscribed before me, this 18th day of May, A. D. 1892.

[SEAL.] HENRY S. PARMALEE,
Notary Public.

Return of the Judges.

We, the undersigned Judges appointed by the Directors of the Atlantic Refining Company to conduct an election by the stockholders of said company for or against the increase of the capital stock thereof from four hundred thousand dollars to five million dollars do hereby certify that after being duly sworn to well and truly and according to law conduct such election to the best of our ability, we held said election at the office of the company in the City of Philadelphia, at twelve o'clock noon on the 18th day of May,
1741 A. D. 1892, the time and place fixed for holding the same by the resolution of the Board of Directors of which written sixty days' previous notice by publication was duly given, and in due form and manner we received the votes of the stockholders of the said company in favor of or against said increase.

And at said election there was voted in favor of said increase four thousand shares and against said increase no shares thereby evincing the consent to the said increase of capital stock of the persons or bodies corporate holding the larger amount in value of the capital stock of the said Atlantic Refining Company.

In witness whereof, We hereunto set our hands this day of May 18th, A. D. 1892.

E. P. COOPER.
GEORGE H. PERKINS.
WM. D. COTTON.

Filed in the office of the Secretary of the Commonwealth, on the 25th day of May, A. D. 1892.

A. L. TILDEN,
Deputy Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I Do Hereby Certify, That the foregoing and annexed is a full, true and correct copy of an Election Return on Increase of Capital stock of the Atlantic Refining Company, as the same appears of record and remains on file in this office.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and year above written.

[SEAL.]

LEWIS E. BEITLER,
Deputy Secretary of the Commonwealth.

1742 OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, Do Hereby Certify, that the attest-ion or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler, whose name is subscribed thereto, was at the time of subscribing the same, Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his office acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said officer, who authenticates the same.

In Testimony Whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed the day and year above written.

[SEAL.]

ROBERT McAFEE,
Secretary of the Commonwealth.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Atlantic Ref. Co. (18).

No. 19.

PENNSYLVANIA, *ss:*

Rob't E. Pattison.

[SEAL.] In the name and by the authority of the Commonwealth of Pennsylvania, Rob't E. Pattison, Governor of the said Commonwealth to all to whom these presents shall come, sends Greeting:

Whereas, In and by an act of the General Assembly of the Commonwealth of Pennsylvania, approved the thirteenth day of June, Anno Domini one thousan- eight hundred and eighty-three, entitled,

"A Supplement to an act entitled 'An Act to provide for the
1743 incorporation and regulation of certain corporations,' approved April twenty-ninth, one thousand eight hundred and seventy-four, providing for the improvement, amendment and alteration of the charters of corporations of the second class," &c., the Governor of this Commonwealth is authorized and required to issue letters patent to all companies now incorporated, or which may hereafter be incorporated, under the provisions of the said act of twenty-ninth of April, 1874, or its supplements, for any of the purposes named in the second class of section two of said act, or embraced in that class by any of the supplements thereto, or to any corporation of the second class which has heretofore or may hereafter accept the provisions of said act, and the several supplements thereto, and the Constitution of this Commonwealth, in the manner provided by law, who shall desire to improve, amend or alter the article and conditions of the charter or instrument upon which said corporation is formed and established, in the manner and at the time therein specified.

And whereas, The Atlantic Refining Company, a corporation of the second class duly incorporated under the laws of this Commonwealth, being desirous of availing itself of the privileges of said act, has made application to me by certificate, under its corporate seal, acknowledged by the President and Secretary thereof, setting forth the character and objects of the proposed improvement, amendment or alteration of its charter or instrument upon which said corporation is formed or established, in the following words, viz:

The Directors may authorize the lease or sale and conveyance by deed under the seal of the corporation of any real estate of said company or interest therein which in their opinion is at the time of such lease or sale not necessary for the carrying on of the business of the company, and has in all respects fully complied with the requirements of the first above recited act of Assembly in
relation thereto, and which certificate has been duly recorded
1744 in the office of the Secretary of the Commonwealth.

Now know ye, That in pursuance of the power and authority given to me by law, I, Robert E. Pattison, Governor of the said Commonwealth, do by these presents, which I have caused to be made Patent, and sealed with the Great Seal of the State, extend the rights and powers of the said corporation in accordance with the terms and provisions of said amendment, alteration or improvement, with full power and authority to use and enjoy all the rights and privileges of the said corporation under its original charter, as amended, altered or improved as aforesaid, by the name, style and title of The Atlantic Refining Company and by the said name, the said corporation shall have successession for the period designated in said original charter, subject to all the provisions and restrictions of the above recited acts of the General Assembly, and all other laws of this Commonwealth relating thereto.

Given under my hand and the Great Seal of the State, at Harrisburg, this twenty-fourth day of June in the year of our Lord

one thousand eight hundred and ninety-three and of the Commonwealth the one hundred and seventeenth.

[GREAT SEAL.]

By the Governor:

WM. F. HARRITY,
Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I do hereby certify, that the foregoing and annexed is a full, true and correct copy of Letters Patent issued to The Atlantic Refining Company, as the same appears of record in this office.

In testimony whereof, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and year above written.

[SEAL.]

LEWIS E. BEITLER,
Deputy Secretary of the Commonwealth.

1745 OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania having the custody of the Great Seal of Pennsylvania, Do Hereby Certify, That the attest-ion or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler whose name is subscribed thereto, was at the time of subscribing the same, Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said officer, who authenticates the same.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

[SEAL.]

ROBERT McAFEE,
Secretary of the Commonwealth.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Atlantic Ref. Co. (19).

No. 23.

Atlantic Refining Company.

Acceptance.

Know all men by these presents, That the Atlantic Refining Company a corporation organized under the act of Assembly of the Commonwealth of Pennsylvania, entitled "An Act relating to corporations for mechanical, manufacturing, mining and quarrying purposes," approved July 18th, 1863, desiring to be entitled to all of the privileges, immunities, franchises and powers conferred by an act of Assembly of the State of Pennsylvania, entitled "An Act to provide for the incorporation and regulation of certain cor-
1746 porations," approved the 29th day of April A. D. 1874, and its various supplements, does hereby in accordance with the provisions of section 26 of said act, as amended by section 6 of the act of April 17, 1876, accept the provisions of the Constitution of Pennsylvania, adopted A. D. 1873, and also the provisions of said act of 29th April, 1874, and its supplements.

Be it further known, That at a meeting of stockholders of said Atlantic Refining Company called for the purpose, among others of approving or disapproving the above acceptance of the provisions of the Constitution and the act aforesaid, held at Philadelphia on the twenty-fifth day of October, A. D. 1889, the foregoing acceptance was by the unanimous vote of said stockholders approved and authorized.

In witness whereof the said Atlantic Refining Company does hereunto affix its seal attested by the signature of its proper officers this twenty-eighth day of October, A. D. 1889.

[SEAL.] W. G. WARDEN, *Pres't.*

C. E. BUSHNELL, *Sec't'y.*

Filed in the office of the Secretary of the Commonwealth, on the 30th day of October, A. D. 1889.

J. H. LONGENECKER,
Deputy Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I do hereby certify, That the foregoing and annexed is a full, true and correct copy of the acceptance of the Constitution of Pennsylvania, adopted A. D. 1873, and also of the provisions of the Act of April 29, 1874, and its supplements, by the Atlantic Refining Company, as the same appears of record and remains on file in this office.

In testimony whereof, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and
1747 year above written.

[SEAL.] LEWIS E. BEITLER,
Deputy Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, Do Hereby Certify, that the attest-ion or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler whose name is subscribed thereto, was at the time of subscribing the same Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said officer, who authenticates the same.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

[SEAL.] ROBERT McAFEE,
Secretary of the Commonwealth.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Atl. Ref. Co. (23).

No. 26.

PENNSYLVANIA, *ss:*

[SEAL.] James A. Beaver.

In the name and by the Authority of the Commonwealth, James A. Beaver, Governor of the said Commonwealth, to all to whom these presents shall come, sends Greeting:

Whereas, In and by an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for
1748 the incorporation and regulation of certain corporation-," approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four, it is provided that corporations for any of the purposes named, and covered by the provisions of the said act, heretofore created by any special act or in existence under the provisions of any general law of this Commonwealth, upon accepting the provisions of the Constitution and of the said Act, by writing, under the seal of said corporation, duly affixed, in the office of the Secretary of the Commonwealth, shall be entitled to all the privileges, immunities, franchises and powers conferred by the

said act upon corporations to be created under the same, and upon such acceptance and approval thereof by the Governor, he shall issue Letters Patent to said corporation, reciting the same.

And whereas, On the thirtieth day of October, Anno Domini one thousand eight hundred and eighty-nine, the Atlantic Refining Company, a corporation created under the provisions of an act, entitled "An Act relating to corporations for mechanical, manufacturing, mining and quarrying purposes," approved July 18th, 1863, has duly filed in the office of the Secretary of the Commonwealth, a writing under the seal of said corporation, accepting the provisions of the Constitution of this Commonwealth, and the provisions of the act above mentioned, which acceptance was on the thirtieth day of October, Anno Domini one thousand eight hundred and eighty-nine duly approved by me.

Now know ye, That in pursuance of the power and authority to be given by law, I, James A. Beaver, Governor of the said Commonwealth, do by these presents, which I have caused to be made Patent and Sealed with the Great Seal of the State, declare the said corporation to be a body politic and corporate in deed and in law, by the name, style and title of the Atlantic Refining Company, and entitled to all the privileges, immunities, franchises and powers conferrd by the act approved the twenty-ninth day of April,
1749 Anno Domini one thousand eight hundred and seventy-four, entitled "An Act to provide for the incorporation and regulation of certain corporations," upon corporations to be created under the same.

Given under my hand and the Great Seal of the State, at Harrisburg, this thirtieth day of October in the year of our Lord one thousand eight hundred and eighty-nine and of the Commonwealth the one hundred and fourteenth.

By the Governor.

J. H. LONGENECKER,
Deputy Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I Do Hereby Certify, that the foregoing and annexed is a full, true and correct copy of Letters Patent issued to the Atlantic Refining Company, as the same appears of record in this office.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and year above written.

[SEAL.]

LEWIS E. BEITLER,
Deputy Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, Do Hereby Certify, that the attest-ion or certificate hereunto attached is in due form and made by the proper office-, and that Lewis E. Beitler whose name is subscribed thereto, was at the time of subscribing the same, Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly;

that the records and proofs hereinbefore certified and exem-
1750 plified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said officer, who authenticates the same.

In Testimony Whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

[SEAL.] ROBERT McAFEE,
Secretary of the Commonwealth.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Atlantic Ref. Co. (26.)

No. 29.

PENNSYLVANIA, *ss:*

Jno. W. Geary.

[SEAL.] In the name and by the authority of the Commonwealth of Pennsylvania, John W. Geary, Governor of said Commonwealth, to all to whom these presents shall come, sends Greeting:

Whereas In and by an act of the General Assembly of the Commonwealth of Pennsylvania, approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and sixty-four, entitled "A Supplement to an act relating to Corporations for mechanical, manufacturing, mining and quarrying purposes, approved the eighteenth day of July, one thousand eight hundred and sixty-three," the Governor of this Commonwealth is authorized and required to issue letters patent to all companies formed under the provisions of an act, entitled "An Act relating to corporations for mechanical, manufacturing, mining and quarrying purposes," approved the eighteenth day of July, Anno Domini one thousand eight hundred and sixty-three, in the manner and at the time therein specified.

And whereas, it appears by writing duly certified to me by the Auditor General of this Commonwealth, that the proper certificate

provided for in the thirty-first section of the above recited
1751 act of the General Assembly, approved July eighteenth, one thousand eight hundred and sixty-three, has been filed with said Auditor General by the "Atlantic Refining Company."

And whereas, The Recorder of Deeds of the County of Philadelphia has certified that the requisite certificate of the formation of said company has been filed in his office.

Know ye, That in pursuance of the power and authority to me given by law, I, John W. Geary, Governor of the said Commonwealth, Do By These Presents, which I have caused to be made Patent, and sealed with the Great Seal of the State, create and erect the said Company into one body politic and corporate, in deed and in law, by the name, style and title of the "Atlantic Refining Company."

And by the said name, the said company shall have perpetual succession, and all the privileges and franchises incident to a corporation. And the said company so incorporated, their successors and assigns, are generally to be invested with all the rights, powers and privileges, with full force and effect, and be subject to all the duties, requisitions and restrictions specified and enjoined in and by the said act of the General Assembly, and all other laws of this Commonwealth.

Given under my hand and the Great Seal of the State, at Harrisburg this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and seventy, and of the Commonwealth, the ninety-fourth.

By the Governor:

J. JORDAN,
Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I Do Hereby Certify, That the foregoing and annexed is a full, true and correct copy of Letters Patent issued to the Atlantic Refining Company, as the same appears of record in this office.

1752 In Testimony Where-, I have hereunto set my hand and caused the seal of the Secretary's office to be affixed, the day and year above written.

[SEAL.] LEWIS E. BIETLER,
Deputy Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, Do Hereby Certify, that the attest-ion or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler whose name is subscribed thereto, was at the time of subscribing the same, Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly; that the records

and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said officer, who authenticates the same.

In Testimony Whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

[SEAL.]

ROBERT McAFEE,
Secretary of the Commonwealth.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Charter. Atlantic Ref. Co. (29.)

1753 No. 30.

PENNSYLVANIA, *ss:*

James A. Beaver.

[SEAL.]

In the Name and by the Authority of the Commonwealth of Pennsylvania, James A. Weaver, Governor of the Said Commonwealth, to all to whom these presents shall come, sends Greeting:

Whereas, In and by an act of the General Assembly of the Commonwealth of Pennsylvania, approved the thirteenth day of June, Anno Domini one thousand eight hundred and eighty-three, entitled "A Supplement to an act entitled 'An Act to provide for the incorporation and regulation of certain corporations,' approved April twenty-ninth, one thousand eight hundred and seventy-four, providing for the improvement, amendment and alteration of the charters of corporations of the second class, &c., the Governor of this Commonwealth is authorized and required to issue Letters Patent to all companies now incorporated, or which may hereafter be incorporated, under the provisions of the said act of twenty-ninth of April, 1874, or its supplements, for any of the purposes named in the second class of section two of said act, or embraced in that class by any of the supplements thereto, or to any corporation of the second class which has heretofore or may hereafter accept the provisions of said act, and the several supplements thereto, and the Constitution of this Commonwealth, in the manner provided by law, who shall desire to improve, amend or alter the articles and conditions of the charter or instrument upon which said corporation is formed and established, in the manner and at the time therein specified.

And whereas, the Atlantic Refining Company a corporation of the second class duly incorporated under the laws of this Commonwealth, being desirous of availing itself of the privileges of said act,

has made application to me by certificate, under its corporate
1754 seal, acknowledged by the President and Secretary thereof,

setting forth the character and objects of the proposed improvement, amendment or alteration of its charter or instrument upon which said corporation is formed or established, in the following words, viz:

That the charter of said corporation shall be and hereby is amended by striking out from the present Articles of Association or charter all of the second paragraph thereof in which is stated the purposes for which said corporation is established and inserting in lieu thereof the following: The purposes for which this corporation is established is the manufacture of illuminating and lubricating oils and all other products of petroleum, the manufacture of packages for holding the same and all the business necessarily incident thereto, and has in all respects fully complied with the requirements of the first above recited act of Assembly in relation thereto, and which certificate has been duly recorded in the office of the Secretary of the Commonwealth.

Now Know Ye, That in pursuance of the power and authority given to me by law, I, James A. Beaver, Governor of the said Commonwealth, Do By These Presents, which I have caused to be made Patent, and sealed with the Great Seal of the State, extend the rights and powers of the said corporation in accordance with the terms and provisions of said amendment, alteration or improvement, with full power and authority to use and enjoy all the rights and privileges of the said corporation under its original charter, as amended, altered or improved as aforesaid, by the name, style and title of Atlantic Refining Company, and by the said name, the said corporation shall have succession for the period designated in said original charter, subject to all the provisions and restrictions of the above recited acts of the General Assembly, and all other laws of this Commonwealth relating thereto.

1755 Given under my hand and the Great Seal of the State, at Harrisburg, this fourteenth day of November, in the year of our Lord, one thousand eight hundred and eighty-nine and of the Commonwealth the one hundred and fourteenth.

[GREAT SEAL.]

By the Governor.

CHARLES W. STONE,
Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

I Do Hereby Certify, That the foregoing and annexed is a full, true and correct copy of Letters Patent issued to the Atlantic Refining Company, as the same appears of record in this office.

In testimony whereof, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and year above written.

[SEAL.]

LEWIS E. BEITLER,
Deputy Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Pennsylvania, ss:

HARRISBURG, *May* 6, 1907.

1756 I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, do hereby certify, That the attest-ion or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler, whose name is subscribed thereto, was at the time of subscribing the same, Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said officer, who authenticates the same.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

[SEAL.]

ROBERT McAFEE,
Secretary of the Commonwealth.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.
(30) Atlantic Ref. Co.

1757 No. 38.

In District Court, Travis County, Texas, June 15th, 1897.

12589.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

Now on this the 15th day of June, A. D. 1897, came on to be heard this cause and both parties having appeared and announced ready for trial, there was then and there presented to the court the general and special exceptions of defendant to plaintiff's first amended original petition and the Court after hearing argument of counsel, considers that said exceptions are not well taken, and,

It is therefore ordered that said general exceptions and all of said special exceptions be and the same are hereby overruled to which the defendant excepts; and then came on the cause to be further heard and came a jury of good and lawful men, to-wit: W. T. McGregor and eleven others, who being duly empanelled and sworn, and who after hearing the pleadings read and after hearing the evidence and argument of counsel and receiving the charge of the Court retired to consider of their verdict and returned into Court the following verdict:

"AUSTIN, TEXAS, *June 15th*, 1897.

"We the jury find for the plaintiff the State of Texas, against the defendant Waters Pierce Oil Company and in favor of the individual defendants Hathaway, Austin, Grice, Keenan and Fries.

W. T. McGREGOR, *Foreman.*"

It is therefore ordered, adjudged, and decreed by the Court, that the defendant, the Waters Pierce Oil Company, be and is hereby denied the right and prohibited from doing any business within this State and that its permit to do business within this State heretofore issued on July 6th, 1889, by the Secretary of State of this State be and the same is hereby cancelled and held for naught and that said defendant, the Waters Pierce Oil Company, its managers, superintendents, agents, servants and attorneys be and are hereby perpetually enjoined and restrained from doing business within this State.

1758 Nothing herein shall be construed to in any way effect or apply to or prohibit said defendant's right to engage in interstate commerce within this State;

It is further ordered that the plaintiff, the State of Texas, recover of the defendant, the Waters Pierce Oil Company all costs in this behalf incurred for which let execution issue.

It is further ordered that the Clerk of this Court shall issue all necessary papers to enforce this judgment.

It is also ordered that the defendants, E. T. Hathaway, William Grice, F. A. Austin, J. W. Keenan and Lewis Fries go hence without day and that plaintiff take nothing as to said defendants and that they recover of plaintiff their costs in this behalf expended.

THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court in and for said County and State, do hereby certify that the within and foregoing is a true and correct copy of the Judgment in cause No. 12,589, The State of Texas *vs.* Waters Pierce Oil Company, as same appears of record in Minute Book 5, page 144, *et seq.*, of the records of this office.

Given under my hand and seal of office, at Austin, Texas, this the 20th day of June, A. D. 1907.

[SEAL.]

D. J. PICKLE,
Clerk District Court, Travis County, Texas,
By J. A. BELGER, *Deputy.*

Endorsed: 38. Judgment *vs.* Old Co.

1759 No. 25.

Affidavit of Dissolution.

Andrew M. Finley, President of the Waters Pierce Oil Company, which was incorporated on the 7th day of May, 1878, being duly sworn, upon his oath states that said corporation was on the 28th

day of May, 1900, by a unanimous vote of its stockholders, duly dissolved and is no longer in existence.

ANDREW M. FINLEY.

Subscribed and sworn to before me, a Notary Public within and for the City of St. Louis Mo., this 28th day of May, 1900.

Witness my hand and notarial seal the day and date last above written. My term expires the 5th day of August, 1902.

[SEAL.] C. W. BLOCK,
Notary Public.

Filed May 29, 1900.
A. A. LESUEUR,
Secretary of State.

Endorsed: Filed in the office of the Secretary of State, this 31 day of May, 1900. D. H. Hardy, Secretary of State.

STATE OF MISSOURI, *ss:*

I, Alexander A. Lesueur, Secretary of State of the State of Missouri, hereby certify that the annexed pages contain a full, true and complete copy of the Affidavit of Dissolution of Waters Pierce Oil Company, filed May 29th 1900, as the same appears on file in this office.

In testimony whereof, I hereunto set my hand and affix the Great Seal, of the State of Missouri. Done at office in the City of Jefferson, this 29th day of May, 1900.

[SEAL.] A. A. LESUEUR,
Secretary of State,
By T. W. PARK,
Chief Clerk.

1760 THE STATE OF TEXAS,
DEPARTMENT OF STATE.

I, L. T. Dashiell, Secretary of State of the State of Texas, do hereby certify that the attached and foregoing is a true and correct copy of the certified copy of the Affidavit of dissolution of the Waters Pierce Oil Company, made by Andrew M. Finley, President of said Company, in the City of St. Louis, Missouri, on the 28th day of May, 1900, and duly certified by Hon. A. A. Lesueur, Secretary of State of the State of Missouri, a copy of whose certificate is hereto attached and certified to by me, all of which said papers are now on file in this Department.

In testimony whereof, I have hereto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, Texas, this the 21st of May A. D., 1907.

[SEAL.] L. T. DASHIELL,
Secretary of State.

Endorsed: No. 24551. The state of Texas *vs.* Waters Pierce Oil Company. Filed May 22, 1907 D. J. Pickle, Clerk. By J. A. Belger Deputy. 25. Aff. of Dissolution.

No. 22.

Know all men by these presents, that we, Henry C. Pierce, Andrew M. Finlay, John P. Gruet, Charles M. Adams and John D. Johnson, all of the City of St. Louis and State of Missouri, do hereby associate ourselves together, for the purpose of forming a corporation under the provisions of the law of the State of Missouri and more particularly under the provisions of Article IX Chapter 12, Revised Statutes of the State of Missouri of the year 1899;
1761 and for that purpose declare and set out the following:

First. The name of this corporation shall be the Waters Pierce Oil Company.

Second. This corporation shall be located at the City of St. Louis in the state of Missouri.

Third. The capital stock of this corporation is Four Hundred Thousand Dollars ($400,000) divided into Four Thousand shares of the par value of One Hundred Dollars ($100) each; and we hereby certify that the same has been *bona fide* subscribed and fully paid up in lawful money of the United States and is in the custody of the persons hereinafter named as the first Board of Directors.

Fourth. The names and places of residence of the several shareholders and the number of shares subscribed by each are as follows:

Name.	Place of Residence.	No. of Shares.
Henry C. Pierce	St. Louis, Mo.	3996
Andrew M. Finlay	St. Louis, Mo.	1
John P. Gruet	St. Louis, Mo.	1
Charles M. Adams	St. Louis, Mo.	1
Jno. D. Johnson	St. Louis, Mo.	1

Fifth. The business of this corporation shall be managed by a Board of Directors composed of five directors, and the following named shareholders shall constitute said board of directors for the first year, to-wit: Henry C. Pierce, Andrew M. Finlay, John P. Gruet, Charles M. Adams and Jno. D. Johnson.

Sixth. This corporation shall continue for the term of fifty years from and after the date of its incorporation.

Seventh. The purpose for which said company is formed are, dealing in naval stores, and dealing in and compounding petroleum and other oils and all the products thereof, and buying and selling the same in the state of Missouri and elsewhere.

1762 In Witness of all which, we have hereunto set our hands and affixed our seals, at the said city of St. Louis, State of Missouri, this the 28th day of May, 1900.

HENRY C. PIERCE. [SEAL.]
ANDREW M. FINLAY. [SEAL.]
JNO. P. GRUET. [SEAL.]
CHARLES M. ADAMS. [SEAL.]
J. D. JOHNSON. [SEAL.]

STATE OF MISSOURI, *City of St. Louis, ss:*

On this 28th day of May, 1900, before me personally appeared Henry C. Pierce, Andrew M. Finlay, John P. Gruet, Charles M. Adams and Jno. D. Johnson, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal at office in the said city of St. Louis the day and year above written. And I certify that my term of office expires on the 5th day of August, 1902.

[Copy of Seal: C. W. Block, Notary Public, City of St. Louis, Mo.]

C. W. BLOCK,
Notary Public, City of St. Louis, Mo.

Filed and recorded May 28th, 1900 at 3:54 P. M.
WM. H. HAHN, *Recorder.*

STATE OF MISSOURI, *City of St. Louis, ss:*

I, the undersigned Recorder of Deeds for said City and State, do hereby certify the foregoing to be a true copy of the articles of incorporation of the Waters Pierce Oil Company, together with the acknowledgment and date of filing and recording thereof as the same remains of record in my office in Book of Corporations, No. 20, page 104.

1763 In Witness whereof I have hereto set my hand and official seal this 28th day of May A. D. 1900.

[SEAL.] WM. H. HAHN, *Recorder.*

Filed and Certificate of Incorporation issued May 29, 1900.
A. A. LESUEUR,
Secretary of State.

THE STATE OF MISSOURI:

No. 11709.

Certificate of Incorporation.

Whereas, an association organized under the name of Waters Pierce Oil Company has filed in the office of the Secretary of State articles of association, or agreement in writing, as provided by law, and has in all respects complied with the requirements of law governing the formation of private corporations for manufacturing and Business purposes,

Now, therefore, I, Alexander A. Lesueur, Secretary of State of the State of Missouri, in virtue and by authority of law, do hereby certify that said association has, on the date hereof, become a body corporate duly organized, under the name of Waters Pierce Oil Company and is entitled to all the rights and privileges granted to

manufacturing and business corporations under the laws of this state for a term of fifty years; and that the amount of the capital stock of said corporation is Four Hundred Thousand Dollars.

In testimony whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri, done at the city of Jefferson, this 29th day of May, A. D. 1900.

[SEAL.]

A. A. LESUEUR,
Secretary of State,
By T. W. PARK,
Chief Clerk.

1764 STATE OF MISSOURI, *ss:*

I, Alexander A. LeSueur, Secretary of State of the State of Missouri, hereby certify that the annexed pages contain a full, true and complete copy of the articles of association of the Waters Pierce Oil Company, filed May 29th, 1900, and of the certificate of incorporation issued to same company on the date aforesaid, as the same appears on file in this office.

In testimony whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at office in the City of Jefferson, this 29th day of May, 1900.

[SEAL.]

A. A. LESUEUR,
Secretary of State,
By T. W. PARK,
Chief Clerk.

THE STATE OF TEXAS,
DEPARTMENT OF STATE.

I, L. T. Dashiell, Secretary of State of the State of Texas, do hereby certify that the attached and foregoing is a true and correct copy of the certified copy of the articles of incorporation of the Waters Pierce Oil Company, a foreign corporation duly organized under the laws of the State of Missouri, filed in this Department, in accordance with the requirements of the laws of the State of Texas, on the 31st day of May, 1900, which said copy of the articles of incorporation of said company is duly certified by the Secretary of State of the State of Missouri, a certified copy of whose certificate is also hereto attached, all of which said papers are now on file in this Department.

In testimony whereof, I have hereto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, Texas, this the 21st day of May, A. D. 1907.

[SEAL.]

L. T. DASHIELL,
Secretary of State.

1765 Endorsed: No. 24551. The State of Texas *vs.* Waters Pierce Oil Company. Filed May 22, 1907. D. J. Pickle, Clerk. By J. A. Belger Deputy. Charter W. P. O. Co. 22.

No. 1246. No. 24.

THE STATE OF TEXAS,
DEPARTMENT OF STATE.

This is to Certify, that Waters Pierce Oil Company incorporated under the laws of the State of Missouri with an authorized Capital Stock of $400,000.00 has this day filed in this Department a certified copy of its Articles of Incorporation, in accordance with the requirements of the laws of the State of Texas; and I further certify that said corporation having this day paid the full amount of fees and taxes prescribed by the laws of this State, and having complied fully with the law in all respects, is entitled to and is hereby granted permission to do business in the State of Texas to the extent and for the purposes as follows, to-wit: "For the manufacture of petroleum and other oils, naval stores and their products, and the purchase and sale of such goods, wares and merchandise used for such business" for a term of ten years from the date hereof.

Witness my official signature, and the seal of the State of Texas affixed, at the City of Austin, this the Thirty first day of May A. D. 1900.

[SEAL.] (Signed) D. H. HARDY,
Secretary of State.

THE STATE OF TEXAS,
DEPARTMENT OF STATE.

I, L. T. Dashiell, Secretary of State of the State of Texas
1766 do hereby certify that the attached and foregoing is a true and correct copy of a permit to do business in the State of Texas, issued to Waters Pierce Oil Company on the Thirty-First day of May, A. D., 1900.

In testimony whereof I have hereto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, Texas, this the 21st day of May, A. D., 1907.

[SEAL.] L. T. DASHIELL,
Secretary of State.

Endorsed: No. 24551. The State of Texas *vs.* Waters Pierce Oil Company. Filed May 22, 1907. D. J. Pickle, Clerk. By J. A. Belger Deputy. 24. Permit.

No. 7.

UNITED STATES OF AMERICA, *ss:*

[Seal U. S. Sup. Court.]

The President of the United States of America to the Honorable the Judges of the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas, Greeting:

Whereas, lately in the said Court of Civil Appeals, before you, or some of you, in a cause between The Waters Pierce Oil Company,

Appellant and the State of Texas, Appellee No. 1974, wherein the judgment of Said Court of Civil Appeals, entered in said cause on the 9th day of March, A. D. 1898, is in the following words, viz: "This cause came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of the Court that there was no error in the judgment, it is therefore considered, adjudged and ordered that the judgment of the court below be in all things affirmed; that the appellee, The State of Texas; E. T. Hathaway, William Grice, F. A. Austin, J. W. Keenan and Lewis Fries do have and recover of and from the appellant, The Waters Pierce Oil Company, principal and its sureties, J. G. Palm, Geo.
1767 Clark and Wm. B. Abaide, all costs in this behalf expended, and this decision be certified below for observance," as by inspection of the transcript of the record of the said Court of Civil Appeals which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and ninety nine, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and was argued by counsel; on consideration whereof, It is now here ordered and adjudged by this court that the judgment of the said Court of Civil Appeals in this cause be, and the same is hereby affirmed with costs; and that the said appellee, The State of Texas, recover against the said appellant for its costs herein expended and have execution therefor.

March 19, 1900.

And the same is hereby remanded to you the said Judges of the said Court of Civil Appeals for the Third Judicial District of the State of Texas, in order that such execution and proceedings may be had in the said cause, in conformity with the judgment and decree of this court above stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 20th day of April, in the year of our Lord one thousand, nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Costs of Appellee.

Clerk	$....
Printing record	$....
Attorney	$....
	$....

Paid by App't.

1768 (Endorsed on back:) Supreme Court of the United States, No. 97, October term, 1899. Waters Pierce Oil Co., *vs.* The State of Texas. Mandate. Filed in Court of civil appeals, 3rd Supreme Judicial District, Austin, Texas, Apr. 25 1900. R. H. Connerly, Clerk.

I, R. H. Connerly, Clerk of the Court of Civil Appeals of the Third Supreme Judicial District of the State of Texas do hereby certify that the two foregoing pages contain a true and correct copy of the mandate of the Supreme Court of the United States of America, filed in said Court of Civil Appeals on the 25th day of April A. D. 1900, in the cause in said Court of Civil Appeals entitled—Waters Pierce Oil Company, Appellant *vs.* The State of Texas, appellee, no. 1974. Witness my hand and the seal of said court this the 25th day of January, A. D. 1907.

[SEAL.] R. H. CONNERLY,
Clerk of the Court of Civil Appeals, Third Supreme Judicial District of the State of Texas.

Endorsed: No. 24551. State of Texas *vs.* Waters Pierce Oil Company. Filed May 22, 1907. D. J. Pickle, Clerk, By J. A. Belger, Deputy. Mandate. (7)

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

General Price List.

NEW YORK, N. Y., *June* 15, 1904.

Mr. S. Johnson, St. Louis, Mo.

DEAR SIR: I beg to advise that on all orders received after this date the prices to you will be as per the enclosed schedule, f. o. b. the points named. Where reductions are made it is not with
1769 the idea that you will give them away unnecessarily, to the trade, but in order that you may make a little larger margin of profits than has been the case; and also to avoid the necessity of having so many special prices.

Respectfully, R. H. McNALL.

(Received Jun- 18, 1904. Answered ——. E. S. H.) Package No. 11. Lubricating Oil Prices. Plaintiff's Exhibit "Z". Cross examination of A. M. Finlay. F. H. S.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

General Price List.

JUNE 14, 1904.

Decline.	Grades.	Prices in cents per gallon in bulk.	F. O. B.
	Amber Silk Oil	32	Cleveland.
	Black Oils:		
.0025	Summer	4	Whiting.
.0025	25/30 C. T.	4½	"
.005	15 C. T.	4½	"
.005	Zero C. T.	5½	"
	Boston Coach Oil	18½	Cleveland.
	Cylinder Oils:		
	A. Cold Test	17	Cleveland.
	B. Cold Test	15½	"
	Capitol Cylinder	21	Whiting.
	Light Capitol Cylinder	22	Cleveland.
	Mineral Capitol Cylinder	20	"
	Ruby Capitol Cylinder	25	"
	Ebony Cylinder	14	"
.055	FFF Cylinder	25	"
	Model Cylinder	18½	"
	Shield Cylinder	17	"
	20th Century Cylinder	30	"
	Cylinder Stock:		
	AA Filtered	17	Cleveland.
	A. Filtered	13½	"
.015	Alaska	15	"
	B. Filtered	13	"
	C. T. Stock	18	"
	E. Filtered	16	"
	H. Filtered	12½	"
	Dark H. Filtered	12	"
	Steam Refined (Ohio)	8	Whiting.

Plaintiff's Exhibit "Z," p. 2. F. H. S.

1770 *General Price List*—Page Cont'd.

	Steam Refined (Penna.)	7½	Franklin.
	S. Filtered	10	Cleveland.
	T. Filtered	12	Cleveland.
	Emerald Boiler Oil	12	Whiting.
	Eldorado Oils:		
	Engine	8½	Whiting.
	Castor	9	"

Plaintiff's Exhibit "Z," p. 3. F. H. S.

	Engine Oils:		
.0125	Renown	12½	Whiting.
	Standard Gas	13½	"
	Westinghouse	10½	"
	Favorite Sewing Machine Oil	15	Whiting.
	Glycerinum Petræ	75	Cleveland.
Decline.	**Harness Oils:**		
.03	Eureka	17	Whiting.
	Standard Leather & Harness	15	Cleveland.
	Harness Oil Stock	12½	"
.005	Mineral Seal	6¾	Whiting.
	Mineral Seal	6	Franklin.
	Miners' Oils:		
	No. 2 300	4½	Franklin.
	XXX	6½	"
	Miners Oil Stock	6½	Whiting.
	Miners Sunshine	3	Cleveland.
	Neutral Oils:		
	"D" Neutral	4¾	Franklin.
	"D" Neutral	4½	Cleveland.
	Dark Neutral	6	"
	Domestic Neutral	5	"
	Pittsburg Neutral	5	"
	Venango	8	"
.01	White	10	Whiting.
.035	Yellow	6½	"
	150 Red	4¾	Franklin.
	180 Red	5¼	"
	150 Pale	5	"
	180 Pale	5¾	"
	Patrolatum Oil	19½	Cleveland.
	Paraffine Oils:		
	Diamond	6	Whiting.
.01	Zone	7¼	"
.055	Polar Ice Machine	9	"
	Putty Oil	19	"
	Red Oils:		
.005	Atlantic Red	18¼	Whiting.
	No. 2 Red	7¼	"
.005	Solar Red	9¼	"

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General Price List—Cont'd.

Decline.	**Residuum:**		
	Not over 23	5	Lima.
	19/21	5¼	"
	19/21 Parkersburg	3¾	Parkersburg.
	Ruddy Harvester Oil	10	Whiting.
	Smiths Ferry Oil	6¾	Pittsburg.

Spindle Oils:

	"B"	9	Cleveland.
advanced 1c	Gravity	10½	"
	Heavy	10	"
	Standard Floor Dressing	17	"
	Straw Oil	5½	Whiting.
	Torch Oil	5	"
	Union Thread Cutting Oil	22½	"
.02	Vegetable Castor Oil	36	"
	White Rose Oil	14½	Cleveland.
	Extra White Rose Oil	18½	"
.035	No. 2 White Rose Oil	8½	"

Wool Oils:

Excelsior	10½	Cleveland.
Llama	14	"
Merino	12	"
Standard	20	"
White Rose	18	"
Wool Stock	10½	"
Heavy Wool Stock	12½	"

Plaintiff's Exhibit "Z," p. 4. F. H. S.

X Oils:

X	8	Whiting.
XX	8¼	"
XXX	8½	"
XXXX	8¾	"
H. V. Oil	13	Buffalo.
Magneto Oil	15	Cleveland.
Atlas Press Oil	15	Whiting.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Mineral Seal.

NEW YORK, N. Y., *Jan'y* 2, 1905.

Mr. S. Johnson, St. Louis, Mo.

1772 DEAR SIR: On all orders received after December 29th the price on Mineral Seal Oil will be 6¾ cents per gallon in bulk Whiting, or 6 cents in bulk Franklin. Regular additions to be made for barrels.

Respectfully, R. H. McNALL.

(Received Jan. 5 1905. Answered ——. E. S. H.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Cost & Selling Price Sheets.

NEW YORK, N. Y., *Sept.* 16, 1904.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: Will you kindly arrange to send me a full set of cost and selling price sheets as of Sept. 30th as soon after the first of the month as possible, and oblige.

Yours truly, R. H. McNALL.

(Received Sep. 19, 1904. Answered ——. R. B. B.)
Transmitted Sep. 19, 1904. To T. F. Lydon.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Mineral Seal Oil.

NEW YORK, N. Y., *September* 19, 1904.

Mr. S. Johnson, St. Louis, Mo.

1773 DEAR SIR: I beg to advise that on all orders received after this date the price to you on Mineral Seal Oil will be as follows:

7¼ cts. per gal. in bulk f. o. b. Whiting, Ind.
6½ " " " " " " Franklin, Pa.

Respectfully, R. H. McNALL.

(Your telegram. Mr. Lyden.)
Stamped: Waters Pierce Oil Co. Lub. Dept., 1904, Sept. 23rd.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Shipments of Refined Oil from San Francisco to Mexican Ports.

NEW YORK, N. Y., *April 6th*, 1903.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: Replying to your favor of the 20th ulto., in regard to price of Refined Oil for shipment from San Francisco, Cal., to Mexican Ports, beg to say, that I have obtained the following information from San Francisco: The rate of freight from San Francisco via Pacific Mail Steamship Co., to Acapulco, Manzanilla (for Colima), San Blas is $7. per ton of 40 cubic feet, with a lighterage charge which the P. M. S. S. Co., were unable to get, which they assume will be from $1. to $1.50 per ton. They could not get the rate from Manzanilla to Colima. The P. C. S. S. Co. quote rates to Culiacan, Guaymas and Lapaz at $7.75 per ton, with a lighterage charge of about $1.75 per ton. The lighterage is for 2,200 pounds; the rate per ton is for 40 cubic feet. The price of Refined Oil
1774 in cases f. o. b. San Francisco would be from 20 to 20½ cents per gallon in reasonably large quantities, the drawback to accrue to seller. The custom charges on each shipment would be from $4 to $6 which would be charged to the W. P. O. Co. Trusting that this will give the information you require, I remain,

Yours truly,
R. H. McNALL.

Received Apr. 8, 1903. Answered ——. J. P. Gruet, Jr.

Endorsed: No. 24,551. Filed May 31, 1907. F. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Names of Banks where Accounts are Kept.

NEW YORK, N. Y., *Feb.* 18, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: Will you please have made up and send me a statement giving the names of the different banks where you have an account. Let this statement give not only the name of the bank but the town or city where each is located. This applies to all substations points as well as main stations.

Yours truly,
R. H. McNALL.

(Received Feb. 20, 1902. Answered 20. J. P. Gruet.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Mineral Seal Oil.

NEW YORK, N. Y., *January* 6, 1905.

Mr. S. Johnson, St. Louis, Mo.

DEAR SIR: On all orders received after this date the price to you on Mineral Seal Oil will be as follows:

6¼ cents per gallon in bulk f. o. b. Whiting, Ind.
5½ " " " " " Franklin, Pa.

Respectfully,
R. H. McNALL.

(Received Jan. 9 1900. Ans. ——. E. S. H.) (Schaub.)

Endorsed: No. 24,551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Advance in Billing Prices of 72 and 73/76 Gravity Gasoline.

NEW YORK, N. Y., *Sept.* 1, 1904.

A. M. Finlay, Esq., Pt. W. P. O. Co., St. Louis, Mo.

1775 DEAR SIR: I mention for your information that taking effect on Tuesday morning, Sept. 6th, an advance will be made in the billing prices of the following grades of Gasoline:

½¢ Deod. Gasoline above Stove up to 72 gravity, inclusive, 1¢ above Stove Steam Treated or Redistilled Gasoline above Stove up to gravity, inclusive, ¾¢ above Deod. Stove Gaso. 1¢ Steam Treated or Redistilled 73/76 gravity, 1¾¢ above Deod. Stove Gaso. 1¢ Deod. 73/76 gravity Gasoline, 2¢ above Deod. Stove Gaso.

No change in any other gravities.

Yours truly,
R. H. McNALL.

(Received Sep. 3, 1904. Answered ——. A. M. Finlay.)
Note. Rundle. Sept. 5, 1904. Noted 9/6/04. T. T. L.
(Read at Executive Committee Meeting. Sep. 3, 1904. J. P. G. Secretary.)

WALTER: How much of an advance is this on the different grades.
A. M. F.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Cyclopædia Information.

NEW YORK, N. Y., *May* 7, 1903.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: I am in receipt of your favor of the 4th inst., enclosing Cyclopædia Reports of various points. It was the intention to get this information for all points where competitors have plants. If there are any other points beside those given where outside plants are located would be glad to have such information in Cyclopædia form as you can get.

On report of the S. W. Oil Company, at Ft. Worth, Texas, I note that they commenced business in November, 1901, but in giving receipts of petroleum products you specify that it is for nine months making a total of 1677 barrels. Will you kindly advise
1776 whether these parties commenced business in November, 1901. If so, should not the receipts be given for the year 1902?

Yours truly, R. H. McNALL.

(Received May 9, 1903. Answered 9. J. P. Gruet, Jr.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Cost of Milk Cans.

NEW YORK, N. Y., *Jan.* 7, 1902.

J. P. Gruet, V. P. Waters Pierce O. Co., St. Louis, Mo.

DEAR SIR: I beg to advise that the cost of Milk Cans used for Milk Can delivery should be charged to B. & M. Expense, the same as you treat the cost for tank wagon buckets.

Yours truly, R. H. McNALL.

(Received Jan. 11, 1902. Answered ——. J. P. Gruet.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Sales of Engine Naphtha.

NEW YORK, N. Y., *May 11th*, 1903.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: In your telegram of May 8th giving total sales of Refined Oil and Naphtha for the month of April, I notice that you have included in the Naphtha sale 20 bbls. of Engine Naphtha. Is this material purchased from the Guffy or other Texas Refiners? If so, will you kindly report such purchases each month on
1777 blanks which I believe you have for that purpose so that I will be fully informed as to the quantity purchased, from whom, price paid, etc.

Yours truly, R. H. McNALL.

Received May 13, 1903. Answered 13. J. P. Gruet, Jr.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

NEW YORK, N. Y., *Sept.* 16, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I have not received from you, for some time, reports showing tank car shipments by other parties than yourselves of fuel oil from Beaumont, and other points. Will you kindly have these reports rendered at as early date as possible, and oblige,

Yours truly, R. H. McNALL.

Received Sept. 18, 1902. Answered ——. J. P. Gruet.
July 26, ——. Sent 9/17.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Report of Outside Shipments of Fuel Oil from Beaumont.

NEW YORK, N. Y., *Sept.* 6, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I have not received from you, for some time, current reports of fuel oil shipped from Beaumont and vicinity.
1778 Neither have I received reports showing shipments of the W. P. O. Co. of the same nature. I shall be glad to have these reports as soon as possible.

Yours truly, R. H. McNALL.

6/17—30. Aug. 2. 7/1/26. Sent 9/17.
Received Sept. 8, 1902. Answered ——. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Report of Beaumont Shipments.

NEW YORK, N. Y., *Nov.* 12, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I find that I have not received any report from you since September 1, of shipments of Beaumont oil, other than the W. P. O. Co.'s shipments. Will you not kindly send me reports, as soon as possible, of September and October shipments, and oblige—

Yours truly, R. H. McNALL.

Sep. 12, 22. Sent 11/12. Received Nov. 14, 1902. Answered 15. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Oil Clearances Sabine Pass and Port Arthur, Texas.

NEW YORK, N. Y., *Mar.* 31, 1903.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: For some time past I have not received from you clearances of Texas Fuel Oil from Sabine Pass and Port
1779 Arthur. Your reports in the past have covered Sabine Pass but not Port Arthur. Can you include in your reports, hereafter, clearances from both of these points, and oblige—

Yours truly, R. H. McNALL.

3/14 last. Received April 2, 1903. Answered ——. J. P. Gruet, Jr.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Water- Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Returning Debit Memorandum for Oils Delivered to S/s "Raithmoor."

NEW YORK, N. Y., *January 30th*, 1903.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I return herewith your memorandum charge against the Standard Oil Company, Marine Department, for one barrel of black oil, and 1½ cases of Water White 150 oil. You note on your bill the price of the Case Oil, but have omitted to put any price on the Black oil. When this difficulty occurs with deliveries to vessels, *and* it occasions considerable delay in rendering invoices to the Steamship owners. Will you not kindly fill in the price of Black oil on this bill; and also arrange that the proper party see that this information will be given on future charges of this kind.

Yours truly, R. H. McNALL.

Received Feb. 2, 1903. Answered ——. J. P. Gruet, Jr.
A. J. H.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Water- Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

NEW YORK, N. Y., *Dec. 24th*, 1902.

1780 J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I beg to hand you, herewith, blank for reporting prices paid for supplies during the month of December.

Yours truly, R. H. McNALL.

Enc. Received Dec. 26, 1902. Answered 26. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Returning of Cargo S. S. "Pinna."

NEW YORK, N. Y., *Aug.* 27, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I beg to acknowledge receipt of your favor of the 23rd inst., enclosing reports showing petroleum clearances from Port Arthur and Sabine Pass for July and first half of August.

I note, with interest, what you say in regard to the S. S. "Pinna" bringing back from Plymouth, England, part of a Cargo with which she was recently loaded, by the J. M. Guffey Company. I shall be glad to have any further information on the subject which you may receive; and, also, would like to know what is meant by "Deodorized Oil," "Solar Oil," and "Refined Oil," with which this steamer is reported to have loaded.

Yours truly, R. H. McNALL.

(Asked T. for additional information. Sent additional information to McN. 9/17/02. See T. letter to A. P. C., 9/11.)
Received Sept. 3, 1902. Answered ——. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

1781 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Marine Oil Report for the First Six Months of 1902.

NEW YORK, N. Y., *Sept.* 18, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., S. Louis, Mo.

DEAR SIR: I should be glad to have, as soon as possible, W. P. O. Co.'s statement showing net results of Marine Oil Business during the first six months of 1902.

Yours truly, R. H. McNALL.

Sent 10/6/02.
Received Oct. 4, 1902. Answered ——. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900

R. H. McNall,
Commercial Agent.

Cost of Barreling and Marketing.

NEW YORK, N. Y., *Dec.* 7, 1903.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: I beg to give below memo. of the average cost of barreling and of marketing oil at Stations in your various divisions during the first six months of 1903, to be used in preparing cost and selling price statements during the first six months of 1904.

On account of recent advances in paying prices for empty packages, there has been added by me to the average cost of empty packages, first six months of 1903, an amount sufficient to cover recent advances of price of empty barrels.

	Prep'n. Iron bbls.		Total cost barrelling.		Marketing. Tank wagon.		Bulk.		Barrels.		
	Head.	Subs.	Head.	Subs.	Head.	Subs.	Head.	Subs.	Head.	Subs.	
St. Louis	.11	.32	2.68	2.29	1.28	2.07	.37	2.01	.76	1.99	22
Arkansas	.34	.27	1.86	1.86	1.81	2.22	1.72	2.30	1.56	1.93	58
E. Texas & La	.17	.44	1.62	1.73	2.71	2.87	2.43	2.63	2.82	2.30	1.98
North Texas	.27	.34	1.97	1.94	1.98	2.34	1.52	2.31	1.89	1.95	1.25
Central Texas	.38	.43	1.64	1.65	2.46	2.78	1.99	2.76	2.60	2.47	1.21
Southern Texas	.25	.45	1.59	1.54	3.75	3.03	3.68	3.07	3.40	2.82	1.96
Mexico	...	.58	.....	.....	1.98	1.89	1.25	1.21	1.96	1.87	1.87

Costs for Southern Texas division includes costs for Western Texas division.

If you desire to make any changes in the bases of costs to be used during the coming six months, please advise.

Yours truly,

R. H. McNALL.

J. A. S. pls. note. J. P. G. (O. K. J. A. S. 12/19/03.)
Received Dec. 9, 1903.
Answered 21, A. J. H.

Endorsed: Filed May 31, 1907. No. 24551. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Cost of Barrelling and Marketing.

NEW YORK, N. Y., *Dec.* 18, 1902.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: I beg to give below memo. of the average costs of barrelling and marketing oil at stations in the various divisions during the first six months of 1902, to be used in preparing cost and selling price statements during the first six months of 1903.

	Prep'n. Iron bbls.		Total cost barrelling.		Marketing. Tank wagon.		Bulk.		Barrels.	
	Head.	Subs.	Head.	Subs.	Head.	Subs.	Head.	Subs.	Head.	Subs.
St. Louis.....	.09	.09	2.26	2.25	1.20	2.23	.38	1.98	.48	2.17
Arkansas.....	.28	.14	1.76	1.71	1.84	2.32	1.78	2.13	1.57	2.08
E. Texas & La..	.06	.28	1.56	1.66	1.78	2.72	2.13	2.42	2 86	2.41
No. Texas.....	.12	.25	1.98	1.94	1.24	2.32	1 23	1.95	1.60	1.90
Cen. Texas.....	.18	.28	1.49	1.52	1.67	2.55	1.76	2.11	2.14	2.55
So Texas.....	.09	.15	1.46	1.44	3.06	3.55	3.31	3.15	3.78	3.39
West Texas.	.16	.19	1.49	1.54	2.31	2.95	1 90	2.80	1.80	2.47
No. Mexico.....	.06	...	....	....	2.10	....	1.14	....	1.89	
Central Mexico .	.19	.13	....	....	1.71	2.00	.96	1.16	1.74	1.84

If you desire to make any change in bases of costs to be used during the coming six months, please advise.

Yours truly,

R. H. McNALL.

J. A. S. 12/20/02. Transmitted Dec. 20, 1902 to J. A. S. Received Dec. 20, 1902. Answered 20, J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

1783 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Refinery Statements.

NEW YORK, N. Y., *Sept.* 17*th*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: Replying to your favor of the 10th inst., beg to say that I am sending to you, by accompanying mail, Refinery Blanks, for your information and guidance.

It is possible that similar blanks could be used at your Mexican Refineries to advantage, in fact Mr. Edwards, soon after his arrival in Mexico last year, wrote direct to one of the refinery superintendents, with whom he was acquainted, asking for copies of these Blanks as he preferred Blanks which he had been using to those he found in Mexico. The letter was referred to me, and I got a set of the Blanks in question and sent them to Mr. Finlay, with a letter, under date of January 24th, 1902, and I presume Mr. Finlay sent these Blanks to Mr. Edwards in Mexico. Mr. Edwards, however is still using the old Blanks, which are not conveniently arranged for making his reports, and which must necessitate a good deal of extra work.

Will you kindly look over the Blanks which I am sending you and, if possible, have your Mexican Refinery Reports conform to them in a general way, and oblige,

Yours truly, R. H. McNALL.

Wrote W. R. R. Oct. 8, 1902.
(Received Sep., 1902. Answered Oct. 6. J. P. Gruet.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Mexican Refinery Reports.

NEW YORK, N. Y., *November* 28, 1902.

1784 J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I am in receipt of your favor of the 24th inst., and am today in receipt of Express package containing reports showing Yield, Cost of Tin Cans and Cases for three months ending September 30th, 1902.

Yours truly, R. H. McNALL.

(Received Dec. 1, 1902. Answered ——. J. P. Gruet.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Reports 41-D and 41-N, Mexico Refineries.

NEW YORK, N. Y., *June 28th*, 1902.

J. P. Gruet, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I hand you with this letter some blank Forms 41-D and 41-N. Kindly have these reports prepared and sent to me each month, and have the June report rendered regularly.

You will understand that I have a report showing Deliveries of Lubricating Oil, but have never received any report from Mexico of the Deliveries of refined oil and Naphtha.

You will please note that these blanks call for the number of gallons, amount of money, and the average price received by the Refinery on deliveries to the trade. This price should show the average price received after deducting all charges, such as freight, terminal charges, etc., etc., arriving at a bulk price received F. O. B. Refinery.

Yours truly,

R. H. McNALL.

Encl.
Sent blanks to Roalfe July 3, 1902. Quoted Roalfe 7/9/1902. Ans. July 2, 1902.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle.

1785

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Special Report.

NEW YORK, N. Y., *February 18th*, 1903.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: Will you kindly send me a report covering your annual sales at each station, separately, which you now report under the head of "Other Stations." You report the sales at the salaried tank wagon points only, and it is necessary for me to have the following information in order to follow up the amount of oil which could be shipped from Corsicana instead of Whiting.

As follows:

Station.	Refined Oil Stove & 70/76 Sales 1902.	86/90 Gaso. Sales 1902.	62/65 Decol. Sales 1902.	Tanks or Barrels.

Yours truly,

R. H. McNALL.

This information required for the following divisions only: Arkansas. E. Texas & Louisiana. North Texas. Southern Texas. (Received Feb. 20, 1903. Answered ——. J. P. Gruet, Jr.)

Endorsed: No. 24551. Filed May 31st, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Changing from Walter Jennings, Agent, to R. P. Tinsley, Agent.

NEW YORK, N. Y., *July 9th*, 1902.

J. P. Gruit, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: For your information beg to say that account formerly handled by Walter Jennings, Agent, will hereafter be handled by R. P. Tinsley, Agent of the same address.

1786 If Mr. C. M. Adams is interested in this, will you kindly show him this letter, and oblige,

Yours truly,

R. H. McNALL.

Notified E. S. Horn. A. P. Robinson. Geo. D. Scherden. P. J. H. Received Jul- 11, 1902. Answered 11. J. P. Gruet.

Endorsed: No. 24551. Filed May 31st, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Report of Prices Paid for Supplies.

NEW YORK, N. Y., *Jan. 28th*, 1902.

J. P. Gruet, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I beg to hand you herewith blank report to be filled in for Prices paid for Supplies, which kindly return to me at your convenience, and oblige,

Yours truly,

R. H. McNALL.

Encl.

(Received Jan. 30, 1902. Answered ——. J. P. Gruet.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Cost of Milk Cans.

NEW YORK, N. Y., *Jan.* 15, 1902.

J. P. Gruet, Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Replying to your favor of the 11th on the above subject I think your manner of having these milk cans numbered,
1787 and keeping a careful record of them, is certainly a most excellent and wise scheme. It is my feeling, however, that the cost of these milk cans should be charged in the first place, as a B. & M. Expense, it not being considered desireable to carry them as a plant item. This would, in no way, interfere, with your way of carrying this account, except that you charge the cost of cans to B. & M. expense.

Yours truly, R. H. McNALL.

Received Jan. 17, 1902. Answered ——. J. P. Gruet.
Received Jan. 17, 1902. Answered 20. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Excess Tank Wagon Equipment at City of Mexico.

NEW YORK, N. Y., *December 5th,* 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: Referring again to my letter on the above subject beg to say that, according to the last encyclopedia report dated Jan'y 1st, 1902, you showed the tank wagons mentioned below at your City of Mexico plant, and in a recent letter from you, on this subject, you stated that you had only 12 tank wagons at this point, and out of that 12 only 6 of the number shown as being in operation during the month of October correspond with the numbers of the wagons shown on your encyclopedia report. I also have a record that, on February 15th, 1902, an appropriation was passed for running gear, wheels, etc. for wagon 289 and on June 18 you report appropriation No. 298 for a tank wagon transferred to the City of Mexico from St. Louis,

the number of which is not stated. Will you kindly advise me if your encyclopedia report of January 1st, 1902, showing wagons as per list below at the City of Mexico is correct, if so, will you kindly send me a memorandum of transfers and additions so that I can make corrections on my records here, and oblige.

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Number on tank wagons.	Capacity. Gallons.	Number of compartments.	Number of faucets.	Number of horses.
160	214	1	1	2
161	398	2	2	2
163	199	1	1	2
164	200	1	1	2
165	215	1	1	2
166	310	1	1	2
167	160	1	1	2
310	297	1	1	2
311	297	1	1	2
312	298	1	1	2
168	209	1	1	2
169	261	1	1	2
174	281	1	1	2
369	301	1	1	2
370	301	1	1	2
371	305	1	1	2
423	342	1	1	2

Yours truly,

R. H. McNALL.

Received Dec. 8, 1902. Answered 8. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1900. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Marine Insurance.

NEW YORK, N. Y., *March* 13, 1903.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: You may remember that in November, 1900, I took up with you the question of Marine Insurance on petroleum merchandise, also, material for Mexico Refineries. In your letter received this morning, in refernce to the goods lost on lighter alongside S. S. "Havana" last October, you stated that all goods at Vera Cruz, Mexico, are lightered for your account, therefore, I am of the opinion

that the insurance companies are not liable for loss of goods from the lighter alongside the S. S. "Havana".

On looking over the policy with the Federal Insurance Company (R. C. Rathbone & Son) on which your refinery supplies are covered, I only find provision for loss during natural voyage of the
1789 steamer on which the goods are shipped. It does not cover lighterage from steamer to final destination, neither does the policy with the Atlantic Mutual Insurance Company on which your petroleum merchandise is insured, cover lighterage at Mexican Ports.

I believe it would be a good time to go over this insurance question and arrange policy so as to cover all the risks to which goods are subjected. The rate charged us by R. C. Rathbone & Son is 35 cents per $100., from which there is no rebate. And open policy can be taken out with the Atlantic Mutual Insurance Co., for about 40 cents per $100 say, possibly a little higher if goods are insured on lighters, and, at the end of the year, a rebate of 40 per cent. is given, payable in script bearing 6%, running for four or five years. This script can always be sold at par, perhaps a little better. This would be a better rate than now obtained through R. C. Rathbone & Son, and there is considerable advantage in having all the goods insured in one company, so that losses would not have to be divided, as in the present case in the S. S. "Havana".

If you think well of making some change and taking out an open policy in the Atlantic Mutual Insurance Co., I will do so on the best terms possible. In doing so, we will take out a policy for, say $1000 on six months insurance, for which the insurance Company would ask us to sign a note for the total premium on same. This can either be allowed to mature, or can be discounted, the latter is the usual course pursued. I should then want to know just what risk you will want covered for goods shipped from New York to any port in Mexico, including all ports, and would like you to state at what ports you would wish the goods insured for delivery by lighter.

I will advise you within a short time as to whether the Insurance Companies consider themselves liable for the loss of the goods on the S. S. "Havana".

Yours truly,

R. H. McNALL.

Transmitted Mar. 19, 1903. To T. J. Ryder.
1790 (Received Mar. 19, 1903. Answered 19. J. P. Gruet.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Fuel Oil Shipments for January.

NEW YORK, N. Y., *February 24th*, 1903.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I am in receipt of Report from "23 D," Receipts and Purchases for month of January. I am inclined to think that the names of some of the parties given, from whom Oil was purchased during the month, do not agree with the notices sent me by Mr. Finlay when he reports current purchases. For instance, there are two items on the report which I cannot check with my records, namely, Galveston—Beaumont Oil Co., 2,000 bbls., at 51 cts., and W. E. Brice, 2951 bbls., at 50 cts. However, I have entered these two items as current purchases during the month.

I should like to have each month, as I have written you before, a report showing the Fuel Oil purchased during the month from the Corsicana Refinery, giving the number of barrels, and the prices paid for same. Will you kindly arrange so that this report will come to me regularly, and oblige,

Yours truly, R. H. McNALL.

January. Jan'y Cor. Fuel Oil. 6015 5/7 at 50c.
Received Feb. 26, 1903. Answered 26. J. P. Gruet, Jr.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Proposed New Accounting for Marine Oil Business.

NEW YORK, N. Y., *Feb.* 6, 1902.

1791 J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: Will you please let me know if you have recently received a letter from C. E. Bedford on the subject "Proposed new Accounting." If you have, will you please send me a copy of it, and oblige,

Yours truly, R. H. McNALL.

A. P. C. Have you received this. J. P. G.
Received Feb. 8, 1902. Answered 8. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Statement of Bad Debts for the First Six Months of 1902.

NEW YORK, N. Y., *July 18th*, 1902.

J. P. Gruet, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I beg to acknowledge receipt of your favor of the 15th inst. enclosing semi-annual statement No. 1, showing value of sales and bad accounts charged to Profit and Loss for the first six (6) months of 1902.

I note that the bad debts charged to Profit and Loss in East Texas and Louisiana Division and North Texas Division are very much greater than at other points, amounting to nearly 1% of the credit sales.

Will you kindly advise me how you account for this large increase in bad debts in East Texas and Louisiana and North Texas Divisions, and oblige,

Yours truly, R. H. McNALL.

Received Jul- 21, 1902. Answered 21, Aug. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

1792 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

NEW YORK, N. Y., *November 25th*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I beg to hand you, herewith, blank report, on which I shall be glad to have you specify prices paid for supplies for the month of October, if not already rendered, and oblige,

Yours truly, R. H. McNALL.

Enc.
A. J. H. 11/28/1902.
Received Nov. 28, 1902. Answered ——. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

NEW YORK, N. Y., *December 2nd*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I would like to have you make me up a statement showing the number of employés of the W. P. O. Co. and the annual amount of wages paid same for one year, this to include men on commission, station agents on commission, and laborers. It is not necessary to have this absolutely correct, but as nearly correct as possible. No classification is required; but, as before stated, the information to cover all employés, laborers and commission men, and the wages to be given in one amount. I should like to have you separate the total of the U. S. Divisions from the Mexican Divisions, giving them separately, and including in the Mexican statement the Refinery employés and laborers, as well as those in your Marketing Department.

Yours truly, R. H. McNALL.

Transmitted Dec. 4, 1902. A. M. F. Pt.
1793 Received Dec. 4, 1902. Answered 5. J. P. Gruet.

Endorsed: No. 24551. Filed May 31st, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Bad Debts and Indemnity Insurance.

NEW YORK, N. Y., *August 22nd*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I am in receipt of your favor of the 20th instant in regard to bad debts charged off during the month of June, and the amount of indemnity insurance which you will probably be able to collect on such losses. If I remember correctly you paid a considerable premium for this insurance, and it does not seem to me good policy to continue this Credit Insurance. I am glad that you have been more fortunate than you anticipated, in collecting your accounts in Texas and Missouri. It would appear, from reports we have here, that the South and Southwest are in a prosperous condition, that is, from the crop standpoint.

Yours truly, R. H. McNALL.

Received Aug. 25th. Answered ——. J. P. Gruet.

No. 24551. Filed May 31st, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Form 30-D.

NEW YORK, N. Y., *July* 23, 1902.

J. P. Gruet, Esq., St. Louis, Mo.:

Referring to report form 30-D.—Deliveries of Refined Oil and Naphtha by tank wagons for June. Lafayette, sub-station of Marshall shows 6 bbls. of Eupion Oil. Previous deliveries at this
1794 point have been W. W. Oil. Please advise.

Yours truly,
R. H. McNALL.

Wrote Littlefield 7/25/02. Ans. 7/29/02. Wrote McNall. 7/29/02. L. B. S.
Received July 24, 1902. Answered ——. J. P. Gruet.

Endorsed: No. 24551. Filed May 31st, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Bad Debts in East Texas & Louisiana and Northern Texas Divisions; Credit Insurance.

NEW YORK, N. Y., *Aug. 7th*, 1902.

J. P. Gruit, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Referring to your letter of the 1st inst., explaining increase in Bad Debts in East Texas & Louisiana and Northern Texas Divisions, beg to say that I am reminded that you have a form of Credit Insurance.

Will you kindly advise me whether under this policy any of the losses made during the first six (6) months of the year will be paid by the Insurance Company. I should be very glad as soon as you have tried this credit insurance for one year to have you advise me the premium paid, losses, if any, collected, and any further particulars which you think would be of interest, and oblige,

Yours truly,
R. H. McNALL.

Received Aug. 9, 1902. Answered 20. J. P. Gruet.

Endorsed: No. 24551. Filed May 31st, 1907. D. J. Pickle, Clerk.

1795 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Mexico Bad Debts for the Year 1901.

NEW YORK, N. Y., *Jan. 27th*, 1902.

J. P. Gruet, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I beg to acknowledge receipt of your favor of the 25th inst., enclosing Semi-Annual Statement showing Bad Debts charged to Profit and Loss, Mexico Division, and also total of United States and Mexico Divisions for year ending December 31st, 1901.

Mexico, I think, heads the list and is keeping up its reputation in this respect as usual.

It is a fine showing.

Yours truly, R. H. McNALL.

Received Jan. 29, 1902. Answer ——. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900

R. H. McNall,
Commercial Agent.

Returning Stable Inventories.

NEW YORK, N. Y., *December 22nd*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I beg to return herewith Stable Inventories of your various divisions, and would ask that you kindly put in the numbers of wagons where they are omitted; and also kindly give numbers and capacities of tank wagons in St. Louis, and oblige,

Yours truly, R. H. McNALL.

The compliments of the Season.

1796 Received Dec. 24, 1902. Answer 24. J. W.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Depreciation on Iron Barrels.

NEW YORK, N. Y., *March* 18, 1902.

J. P. Gruet, Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: For some unknown reason, on Dec. 28, 1895, instructions were given to charge iron barrel depreciation of 4¢ per barrel direct to P. & L. Account.

Do you know of any reason why this depreciation should not be charged to B. & M. Expense, the same as depreciation of "Stable Equipment."

Your views in regard to this matter will be much appreciated by,

Yours truly, R. H. McNALL.

Received Mar. 20, 1902. Answered 20. J. P. Gruet.

Endorsed: 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Cyclopedia Reports.

NEW YORK, N. Y., *May* 6, 1903.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: Replying to your favor of the 4th instant, beg to hand you, herewith, copies of Cyclopedia Reports relative to E. M. Wilhoit Joplin and Springfield, Missouri, and Gubser and Rutter, Belleville, Illinois.

Yours truly, R. H. McNALL.

Enc.

Received May 8, 1903. Answered 8. J. P. Gruet, Jr.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

1797 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Reporting Sales Deodorized 73-76.

NEW YORK, N. Y., *Feb.* 11, 1903.

J. P. Gruet, V. P. Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: On your monthly naphtha sales report, you only show delivery of 63 naphtha, stove gasoline, and 87-90 gasoline. I believe you are receiving from Whiting some Deodorized 73-76 naphtha. Are you including sales of this grade with Stove gasoline? While, probably, the business does not amount to very much, it seems to me that you could report sales of this grade, separately, and would ask that you kindly do so, beginning with your January report.

Yours truly, R. H. McNALL.

Received Feb. 13, 1903. Answered ——. J. P. Gruet, Jr.

Endorsed: No. 24551. State of Texas *vs.* Waters Pierce Oil Company. Filed May 31, 1907. D. J. Pickle, Clerk, By J. A. Belger, Deputy.

No. 36.

A. M. Finlay,
Vice President.

Subject: Eagle Refining Company, Dallas.

ST. LOUIS, MO., *April* 28, 1891.

H. A. Dennett, Cashier, Dallas, Texas.

DEAR SIR: Yours of the 25th inst., received. If you have not done so, please send regular slip, showing advance in your case Eupion price at Dallas.

Of course in Mngr. Grice's absence, you appreciate the necessity of close attention to the Eagle Refining Company's efforts at Dallas and surrounding territory; and as we have understood from Mngr. Grice, Mr. Taylor is to give his time to this particular trade.

We are very glad to know that you are on such good terms with the railroad people, that Mr. Clem gains nothing by mark-
1798 ing his shipments by numbers, instead of names.

We want to make prices at Dallas, and in the neighborhood on Brilliant and Water White oil, that will prevent Clem doing any business.

Hope you will make it a point to be present at the next meeting

of the City Council tomorrow night and do everything possible to prevent granting of permit to build within city limits, unless building similar to ours is constructed; for it would not be fair to us, to allow some one else to put up construction for the storage of oil, when they had compelled us to put up such an expensive building, as we have done. Of course we appreciate, however, that you will cover these points, without our calling your attention to them.

Would be glad to have you advise us, when Clem's first two tank cars have been emptied and returned; also the second two, to which you refer as having been in the yard, nine and sixteen days, that we may know how long they have been held in Dallas. The movement of tank cars, enters into the cost of the oil; so it is necessary to have this information, that we may know what we are competing with.

Yours truly, A. M. FINLAY,
Vice President.

(Texas Division, Cashier, Rec'd Apr. 30, 1891. Ans. 30-91.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. (Letter 1891 in regards to Clem.)

No. 4.

Waters Pierce Oil Company.

Incorporated May 29, 1900.

OFFICE OF PRESIDENT,
ST. LOUIS, MO., *May* 29, 1900.

Mr. —— ——.

DEAR SIR: The Waters Pierce Oil Company, incorporated May 29th, 1900, has purchased all of the property wherever situated of the Waters Pierce Oil Company, which was incorporated May 7, 1878, and dissolved by unanimous resolution of its stockholders, May 28th, 1900.

1799 Referring to the notice signed by Andrew M. Finlay, President of that Company, you are advised that you are hereby employed by this Company in the same capacity as you were employed by the old Waters Pierce Oil Company and at the same salary, and your services on behalf of this Company will commence upon the morning of June 1st, 1900.

As soon as possible you will be advised concerning the details of the conduct of this Company's business in your charge.

Yours truly, H. C. PIERCE, *President.*

Endorsed: No. 24551. Filed May 30, 1907. D. J. Pickle, Clerk.

No. 5.

Waters Pierce Oil Company.

ST. LOUIS, MO., *May 29th*, 1900.

To Managers, Agents and Representatives of the Waters Pierce Oil Company:

The Waters Pierce Oil Company, incorporated May 7th, 1878, was, on the 28th day of May, 1900, by unanimous vote of its stockholders, dissolved, and you are hereby respectfully notified that your services will not be required and will cease and terminate upon the evening of May 31st, next.

This Company has this day sold and arranged to transfer on May 31st, 1900, all of its property to the Waters Pierce Oil Company, incorporated at St. Louis, Mo., May 29th, 1900, and after May 31st, 1900, you will hold all of this Company's property in your charge subject to the order of H. C. Pierce, President of the new Waters Pierce Oil Company; and in the meantime you will continue making sales and remittances as heretofore up to the evening of May 31st, 1900.

On behalf of the Stockholders and Officers of this Company, I desire to thank you for your faithful attention to its interests.

Very truly yours, A. M. FINLAY, *President.*

1800 Endorsed: No. 24551. Filed May 30, 1907. D. J. Pickle, Clerk. Letters of dischg. & emp. (4) (5).

No. 39.

Copy of Charge.

In the District Court, Travis County, Texas, for 26th Judicial District, May Term, 1897.

No. 12589.

THE STATE OF TEXAS
vs.
THE WATERS PIERCE OIL COMPANY ET AL.

GENTLEMEN OF THE JURY:

This is a suit by the State of Texas, as plaintiff, against the Waters Pierce Oil Company, a private corporation, and E. T. Hathaway, William Grice, F. A. Austin, J. W. Keenan, and Lewis Fries, as defendants, to cancel the permit of said Waters Pierce Oil Company to do business in this state, and to enjoin all of said defendants from further transacting the business of said company in this state, on account of an alleged violation of the laws of this state against trusts by said company, its agents and employés.

The plaintiff alleges that the defendant Waters Pierce Oil Company is a private corporation, incorporated under the laws of the state of Missouri, for the purpose of dealing in petroleum and its products and in selling the same in the state of Missouri and other states, and that on July 6, 1889, said company filed its articles of incorporation in the secretary of state's office in this state, and secured a permit to transact its said business in the state of Texas for a term of ten years, as provided by the laws of this state, and that since said date defendant company has been transacting its said business in this state, and has divided this state into five general divisions for the purpose of transacting its said business, and that the defendants E. T. Hathaway, F. A. Austin, William Grice,
1801 J. W. Keenan, and Lewis Fries are the respective managers of defendant company in said general divisions of this state, and have appointed various local agents throughout this state for the transaction of its business.

Plaintiff further alleges that the defendant company has violated the law of this state against trusts, by making and entering into a contract with, and becoming a member of, the Standard Oil Trust; which contract and agreement is set out in full in plaintiff's petition, and for doing certain other acts in connection with said Standard Oil Trust agreement.

Plaintiff also alleges that the defendant company has violated the law of this state against trusts by entering into a contract with the Eagle Refining Company, with C. W. Robinson, with J. L. Lewis and Stilwell Bros., as set out in plaintiff's petition and introduced in evidence before you.

Plaintiff further alleges that since July 6, 1889, said defendant company has been, and still is, engaged in dealing in and selling the products of petroleum in this state, and that during that time said company has made, and is still making, through its agents in this state, contracts and agreements, by and between said company and other parties dealing in, buying, and selling similar oils, in this state, by the terms of which agreements said parties, for a valuable consideration paid them by defendant company, agreed and contracted that they would not buy any oils from any other person or corporation, but would deal with and buy and sell oils obtained from said defendant company exclusively; that said company has further contracted with certain of said persons, as aforesaid, for a valuable consideration, paid by defendant company to said parties, by the terms of which said parties contracted and agreed to buy from and sell the oils of defendant company exclusively, and not to sell the oils so bought, as aforesaid, to any one buying from, or dealing with, any other person or corporation dealing in such oils in com-
petition with said defendant company, and, further, that said
1802 company, since July 6, 1889, has made and entered into other contracts and agreements, by and between it and various others dealing in, buying, and selling oils, by the terms of which said parties agree with said company to purchase its said oils, and to sell the same to others desiring to purchase the same, at prices fixed and established by it or its agents and officers. The names

and dates and contracts above referred to are set out in plaintiff's petition.

Plaintiff further alleges that prior to July 6, 1889, and also since that date, the defendant company entered into certain contracts in writing, with certain parties in Brownsville, Tex., by the terms of which said parties bound themselves to buy all their oil from defendant company, for a fixed period, in consideration of certain rebates allowed them by defendant company, and also agreed to sell such oil at a price fixed by defendant company, and that such contracts as were entered into prior to 1889 have been carried out and executed, and business done thereunder by said parties since that date to the present time. The parties with whom said contracts were made, and the terms thereof, are set out in plaintiff's petition.

Plaintiff alleges that all of said contracts above mentioned were made by the agents of said defendant company, and were authorized by it, and were fully ratified and carried out by it after same had been so made, and that the same were a violation of the laws against trusts of this state; that the products of petroleum are articles of prime necessity to the people of this state, and that, by reason of said acts and contracts, said defendant company has forfeited its right to transact business in this state; and prays for an injunction prohibiting the defendant company, its agents and employés, from further violating said statute, and for a decree canceling the permit of said company to do business in this state.

The defendants answer by a general denial of all the allegations of plaintiff's petition, and especially answer that the Waters Pierce Oil Company is the real defendant in this action, and that
1803 the other parties named as defendants are simply its agents in the state of Texas. It further says that the state of Texas is estopped from canceling defendant's permit to do business in this state, because that on July 6, 1889, through its proper officers, and in pursuance of the provisions of the law of this state, it did, for a sufficient and lawful consideration, issue to said company a permit to do business in this state for a term of ten years from that date, and that said permit was a valid and binding contract between it and the state of Texas.

Defendant further pleads that it is a foreign corporation of the state of Missouri, having its principal offices in said state of Missouri, and that the business transacted by it in the state of Texas was interstate commerce, and not subject to the laws of the state of Texas. Defendants denies that it ever became a member of, or a party to, the Standard Oil Trust agreement, or that it acted with said trust, or was controlled by said trust in any way; that said trust was dissolved March 21, 1892. Defendant denies that it ever entered into any of the contracts or agreements with the parties named in plaintiff's petition, for the sale of its oils, and that if any such contracts or agreements were entered into, as set forth in plaintiff's petition, with any one representing the defendant company, either as agent, attorney, employé, servant, or otherwise, the same was never known to the defendant company, nor did it ever

san-tion or ratify such contract, either directly or indirectly; wherefore they pray that plaintiff take nothing by this suit.

Upon the law of the case, you are instructed as follows:

Under the laws of this state, a 'trust' is defined as follows: A trust is a combination of capital, skill, or acts, by two or more persons, firms, corporations, or associations of persons, or either two or more of them, for either, any, or all of the following purposes: First, To create or carry out restructions in trade or commerce, or aids to commerce or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of the state. Second. To increase or reduce the price of merchan-
1804 dise, produce, or commodities. Third. To prevent competition in manufacture, making, transportation sale, or purchase of merchandise, produce, or commodities, or to prevent competition in aids to commerce. Fourth. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity or merchandise, produce, or commerce intended for sale, use, or consumption in this State. Fifth. To make or enter into or execute or carry out any contract, obligation, or agreement of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity or article of trade, use, merchandise, commerce, or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation, between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine, or unite any interest they may have in connection with the sale or transportation of any such articles or commodity, that its price might in any manner be affected.

Now, if you find from the evidence that the defendant company, acting through its duly appointed and authorized agents entered into and performed a contract, in the state of Texas, with any of the parties dealing in, buying, and selling oils, as named and sent out in plaintiff's petition, since July 6, 1889, by the terms of which contract it was agreed that said parties were to buy oil from the defendant company exclusively, for any specified time, and from no other source, in consideration of rebates allowed them by the defendant company, or for any other valuable consideration; or if you find that said company, so acting through its duly appointed and authorized agents, since said date, made, entered into,
1805 and carried out a contract in this state with any of the persons named and as stated in plaintiff's petition, by the terms of which said parties bound and obligated themselves, for a valuable consideration, to buy all their oils from defendant company, and not to buy oils from any other source for any specified time, and not to sell said oils so bought from defendant company to any person handling or dealing in oils in competition with defendant

company; or if said defendant company, so acting since said date, made and entered into and carried out, in this state, a contract with any of the parties, as stated and named in plaintiff's petition, by the terms of which said parties, for a valuable consideration, bound and obligated themselves to said company, either verbally or in writing, to buy all their oils exclusively from defendant company, and from no other source, and to sell said oils so bought to other parties desiring to purchase the same at a price fixed by said company's officers or agents; and you further find that said sales of oils were not interstate commerce, as that is hereinafter explained to you, and that said officers or agents, so acting for said company in making said contracts, if any were so made, were acting in the scope of their employment and duty, and were authorized to make such contracts by the governing officers of said company, or that said governing officers with a knowledge that said contracts had been made, consented to and ratified or carried out the same after they were made,—then you are instructed that the defendant would be guilty of violating the law against trusts, of this state; and, if you so find the facts to be as above stated, you will return a verdict for the plaintiff against the defendant Waters Pierce Oil Company.

You are further instructed that a corporation can only act through its agents and servants, but a corporation is not liable for all the acts of its agents or servants. It is liable, however, for the acts of its agents, done in the scope of their employment and agency,
1806 and is also liable for the acts of its agents which it has authorized such agents to perform, and it is also liable for the unauthorized acts of its agents which have been acquiesced in, or ratified by, the governing body of said corporation.

Now, if you find from the evidence that any or all of the contracts mentioned in Section No. 10 of this charge were made and carried out by the defendant company, acting through its agents, with the parties therein named, but you do not find that said agents were authorized by the governing body of said corporation to make said contracts, nor that said contracts were made in the scope of the duty and employment of such agents, and do not find that said contracts, if any were made, were known to, or acquiesced in or consented to by, the governing body of said corporation, after being made by said agents, then you will return a verdict for the defendant company.

But if you find said contracts mentioned in section No. 10 of this charge were entered into by the defendant company, acting through its agents, and that said agents were acting in the scope of their employment and agency in making said contracts, or, if said contracts were not authorized by the governing body of said corporation, that it acquiesced in or consented to or ratified said acts, after knowing the same had been entered into, then said defendant company would be liable for such acts.

You are further instructed that this court has no jurisdiction over, and the laws of this state do not apply to, interstate commerce; that is, to commerce between the different states of the United States. Shipments of oils or other products, made by the Waters Pierce Oil

Company from points without this state to its agents within this state, is interstate commerce, until such oils are sold by said company in the original packages in which it was shipped into this state and as such is not subject to the laws of this state regulating the sale thereof; and if the evidence introduced before you
1807 shows any of the contracts set out in plaintiff's petition were made in reference to any state commerce, then you will not consider such contracts further, as the laws of this state do not cover such transactions; but, on the other hand, if the Waters Pierce Oil Company shipped oils from points beyond this state to its agents to points within this state, and, after their receipt in this state, the same were sold by said agents in this state, to parties in this state, in broken packages, or by retail, and not in the original packages in which said oils were shipped into this state, then such business is not interstate commerce and is subject to the laws of this state. You are further instructed that, even though the contracts may have reference to interstate shipments of oils, yet if the parties go further, and contract that such oils, after being sold by said Waters Pierce Oil Company to parties in this state, shall be sold, by said parties at a price, fixed by the duly-authorized agents of defendant company then you are informed that such dealing with said oils, after its sale to parties in this state, is not protected by the interstate commerce laws, but such contracts, if made, are subject to the laws of this state.

You are instructed that the law against trusts in this state became a law on March 30, 1889, and was amended in 1895, and the defendant company obtained its permit to do business in this state on July 6, 1889, and all transactions in evidence before you of date prior to July 6, 1889, are immaterial in this case, except where such contracts were continued and carried out subsequent to July 6, 1889, and for the purpose of showing the course of dealing of said company in this state, and such transactions prior to July 6, 1889, are no ground for forfeiture of defendant's permit to do business.

There has been certain evidence introduced before you tending to show efforts and inducements offered by the agents of the
1808 defendant company to parties to handle oils of defendant company exclusively, and tending to show refusal of the agents of said company to sell parties handling other oils than those of defendant company, and of discrimination in prices against parties handling other oils than those of defendant company, and of cutting of prices by defendant company to break down competition. None of these things are unlawful, and was only admitted as bearing upon the question of the course of dealing of defendant company in this state, and as bearing upon the question whether or not the defendant company made or entered into the contracts, or any of them, as set out and mentioned in section No. 10 herein, and as to whether or not such contracts or course of dealings, if any such there was, was known to the governing officers of t-e defendant company or was authorized by them.

There has been introduced in evidence before you a certain con-

tract, known as the 'Standard Oil Trust Agreement,' and certain evidence tending to show that the defendant Waters Pierce Oil Company became a member of and entered into said agreement. You are instructed that the evidence is not sufficient to show that defendant became a member of said organization, if at all, in a manner that violates the trust laws of this state, and you will therefore disregard all testimony upon this branch of the case.

There has also been introduced in evidence before you certain evidence in regard to a contract made by the defendant company with the Eagle Refining Company, and also with C. W. Robinson, with J. L. Lewis, and Stillwell Bros., in the state of Texas, by which they purchased the business of such concerns. You are instructed that such transactions as these are not believed to be in violation of the laws of this state, and the evidence in regard to these transactions will only be considered by you as bearing upon the course of dealing of defendant company in this state.

1809 The questions for you to determine in this case are: First. Were any of the contracts mentioned in section 10 of this charge made and entered into and carried out by the defendant company in this state since July 6, 1889, acting through its agents? Second. Whether such agents were acting in the scope of their authority and employment in making such contracts, or, if not, whether same were ratified or acquiesced in by defendant company after they were so made. Third. Whether said contracts, if any, related to interstate commerce or to business within this state.

In determining whether or not the agents of defendant company were authorized to make the contracts alleged, if any were so made, or whether same were known to or acquiesced in by defendant company's governing officers, the same does not necessarily have to be shown by positive or direct testimony, but may be shown by circumstances; and you will take into consideration all the facts and circumstances in evidence before you in determining this question.

You will return a verdict for the defendants Hathaway, Austin, Grice, Kennan, and Fries, as they are only the agents of defendant company, and not liable in this suit. If you find a verdict for the plaintiff, you will say: 'We, the jury, find for all the defendants, and that Plaintiff take nothing by this suit.'

The burden of proof is on the plaintiff to show, by a preponderance of the evidence, the facts necessary to entitle it to recover.

The jury are the exclusive judges of the credibility of the witnesses, the facts proven, and the weight to be given the testimony, but are bound to receive the law from the court and be governed thereby.

(Signed) R. E. BROOKS,
Judge 26th Judicial District.

Endorsed: Chg. of Ct. in old Co. case.

1810 Copy.

Package No. 10.

Walker Smith Gro. Co., Brownwood.

CWC 1. FEB. 10*th*, 1906.

Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

DEAR SIR: Your letter of the 8th received and noted.

We have not as yet, been able to arrive at a satisfactory understanding with the Walker Smith Gro. Co. at Brownwood, Texas. I went into matters very thouroughly with them when in Brownwood last week but they did not seem at that time disposed to accept a 10% proposition. Their Buyer suggested that we could have their business if we would allow them a discount of 15%, but I do not feel that conditions at the present time warrant our offering them such a liberal arrangement.

Our making an arrangement with these people would probably shut the R. G. O. Co. out in this particular territory and would likely enable us to advance our schedules from ½ to 1¢ per gal. at several points, and, after carefully considering the matter, I have reached the conclusion that it would pay us to allow them a discount of 12½%, as a last resort, and I am rather inclined to think they would accept this arrangement.

If you agree with me in the matter kindly authorize us to arrange with them on this basis.

Yours truly, —— ——, *Manager.*

210-647.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Copy.

Stove Gasoline.

CWC-1. MARCH 7*th*, 1906.

1811 Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

DEAR SIR: I have your letter of the 5th inst. on the above subject.

The Southwestern Oil Co. and R. G. O. Co. Corsicana, appear to be getting all the Gasoline they want from the Texas Co. and the Climax Ink & Oil Co., Clem Oil Co. and Oriental Oil Co. are being kept well supplied by the G. R. Co.—Can't you arrange in some way to get gasoline which the G. R. Co. and Texas Co. are selling in a wholesale way to the concern referred to above?

With these small concerns out of the road we could obtain a much more satisfactory price for our gasoline than is possible under present conditions.

Yours truly, —— ——, *Manager.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Discount Rotan Grocery Co., Waco.

CWC-1. MARCH 7, 1906.

Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

DEAR SIR: I have recently had some correspondence with the Rotan Gro. Co. of Waco, Texas relative to supplying them with what refined oil they have occasion to market, and for your information I hand you herewith, copy of a letter received from them under date of the 6th, inst.

As you will no doubt remember, the Rotan Gro. Co. have been working with the R. G. O. Co. during the past two years, and while they have not done very much of late they were at one time placing quite a number of cars.

We have the territory in which the Rotan Gro. Co. are doing business well covered by our tank wagons and I do not believe they will be able to do much business, however, our having an
1812 arrangement with them on refined oil will assist us in holding their trade on axle grease, lubricating oils and other lines which they handle and they will also assist us in preventing the sale of a car of refined oil here and there which the R. G. O. Co. might put in with the assistance of the Rotan Gro. Co. Salesman.

I would suggest that you authorize us to allow them a discount of 10% on their purchases at Waco, Temple, Hico, Hillsboro, Cameron and Rockdale, (The latter agency is in South Texas Division)—I also think it a good idea to concede them a 2% discount for cash to protect them to cover the taxes which they will pay the State of Texas on their refined oil sales.

Kindly let me hear from you hereon promptly

Yours truly, —— ——, *Manager.*

214.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle.

Copy.

Discount Snyder Brokerage Co., San Angelo.

MARCH 27, 1906.

Mr. C. P. Ackert, General Manager, St. Louis, Mo.

DEAR SIR: Since our last advance of 1¢ per gal. on Eupion Oil at San Angelo, Texas, the Snyder Brokerage Co. have become dissatisfied, and it will be necessary for us to increase their allowance on iron barrel and case Eupion; also case Brilliant 1¢ per gal. to 10% in order to satisfy them and prevent their buying from others in car lots.

The Snyder Brokerage & Storage Co. do a wholesale Grocery and Grain Business, and as they are traveling several men in the San Angelo territory, they are in a position to render us considerable assistance in holding the trade, and I would strongly recommend increasing their discount to the extent asked.

1813 The purchases of this concern during the past six months have averaged $124.66 per month.

Yours truly, —— ——, *Manager.*

215.

Endorsed: No. 24551. Filed May 31, 1907. *Filed* D. J. Pickle, Clerk.

Copy.

Discount B. L. Morris, Ft. Worth.

CWC-1. MARCH 2*nd*, 1906.

Mr. C. P. Ackert, General Manager, St. Louis, Mo.

DEAR SIR: I will thank you to authorize us to allow B. L. Morris Ft. Worth, Texas a discount of 1¢ per gal. on Eupion Oil.

Mr. Morris' purchases will average about 600 gals. per month. He has been buying exclusively from the Gulf Ref. Co. for the past three months and claims they have been making him some special concessions. However, he has always been disposed to favor competitors at equal prices. The concession asked for will give us his trade in future.

Yours truly, —— ——, *Manager.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Copy.

Conditions at Dallas.

DEC. 9*th*, 1905.

Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

DEAR SIR: As stated in my letter of the 29th, ult. the
1814 Southwestern Oil Co., Clem Oil Co. and Oriental Oil Co. have been offering the better trade at Dallas, discounts varying from ½¢ to 1¢ per gal. on refined oil and gasoline, ever since the last two advances went into effect, and matters have now reached a point where it is going to be necessary for us to either put in effect a reduction of ½¢ on both oil and gasoline or allow a number of discounts, and while as a general proposition I do not favor discounts, I would advise using them in this particular case, at least until rebate offers being made by competitors affect a larger percentage of the total gallonage than at present.

I attach hereto, a list of 19 Dallas Merchants with name of concern from whom they are at present buying, estimate monthly purchases of both refined oil and gasoline, and discounts which it will probably be necessary to allow in order to hold those we are now selling and regain all or a part of the trade of those who are buying from others.

Prior to our putting in effect the first advance of ½¢ on Refined and 1¢ on gasoline Sept. 29th, 1905, we were selling every merchant whose name appears on list with the exception of Sonnenthiel-Holbrook Co. but competitors now have eight out of the 19 and we will gradually lose the others unless we meet offers made by competition which as stated above, vary from ½¢ to 1¢ off schedule on Oil and gasoline and I will be obliged if you will authorize us to allow the discounts noted opposite each merchant's name on enclosed list in case we find it absolutely necessary to do so in order to protect our interests.—We will, of course put in Brilliant against competitors best grade at regular schedule when possible and allow discounts on gasoline only, and all special arrangements will be made subject to change at any time so that in case a reduction in schedule becomes necessary, the discounts can be cut off.

Our total sales, bulk and Bbls. from Dallas in Nov. 1905 were about 56,800 gal. refined and gasoline, while total gallonage affected by proposed discounts, if all are allowed, would be but 12,450 or 22% of the total.

1815 Our total sales from Dallas in Nov. 1905 show a decrease of 98 Bls. as compared with the same month 1904 and practically all of this decrease occurred on City tank Wagon sales, a greater portion of it being due to increase in sales by others, consequently, you will appreciate the importance of at once taking steps to improve conditions.

Yours truly,

—— ——, *M.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Copy.

Gasoline Prices.

CWC-1. MARCH 7*th*, 1907.

Mr. C. P. Ackert, General Manager, St. Louis, Mo.

DEAR SIR: I have your wire this date authorizing an advance of 1¢ per gal. on gasoline at Sherman and Ft. Worth if conditions warrant.

We will probably be able to make these advances in the course of the next day or two.

In reference to advancing our gasoline prices at other points. There are a few agencies where it will possibly be safe to make advance, after the advance at Sherman and Ft. Worth are put in effect; I would not, however, advise a general advance until we can find out to what extent the advances being made by the South Texas Refineries will affect such concerns as the Climax Ink & Oil Co., the Southwestern Oil Co., Clem Oil Co., Oriental Oil Co. and the R. G. O. Co.

At the present time the Climax Ink & Oil Co. are naming a flat price of 12¢ per gal. on stove gasoline fob all points to which they are making shipments in car lots, and as they — ma-ntaining agencies

at Waco, Greenville Dublin and one or two other convenient
1816 distributing points trade to a more or less extent now, and
our advancing at this time would turn a larger per centage of the trade to them then we can afford to let them have. If I find latter that the Climax Ink & Oil Co. are disposed to advance their gasoline prices I will probably take advantage of it at points where we now have ten cent schedules.

I infer from your wire that it will be satisfactory to go ahead and advance our gasoline prices wherever conditions warrant. If I am not correct, please advise.

Yours truly, —— ——, *Manager.*

(213-6-649.)

(Endorsed:) No. 24,551. Filed May 31, 1907. D. J. Pickle, Clerk.

Copy.

CWC-1. JAN'Y 10, 1906.

Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

DEAR SIR: Referring to our two telegrams of the 9th relative to refined oil shipments from Corsicana.

I was in Corsicana yesterday and on investigation found that the Refinery did not have any finished W. W. 120 on hand that date, and only had two cars of finished P. W. 150, both of which were shipped out yesterday morning on orders from South Texas Division.

Agent Angus will probably get today four or five cars of W. W. 120 but no P. W. 150 and we are promised four cars each of W. W. 120 and P. W. 150 on Saturday the 13th, but if the bad weather we are now having continues throughout the week, it is possible we may not get these last eight cars until next week.—You will understand from the above that we have exhausted the surplus stock of P. W.
150 which the Refinery had on hand, and from now on we
1817 will have to depend on their daily output for our supply of this grade of oil as well as W. W. 120.

As near as I can figure, we can probably depend on getting about 6000 42 gal. barrels of W. W. 120 and 1500 barrels of P. W. 120 or a total of 7500 42 gallon barrels during the remainder of January, and this estimate includes the oil which we will get today.

We will require at Dallas, Ft. Worth, Waco, Corsicana and other points in Central Texas Division, taking less than a 25¢ rate, about 3000 barrels of W. W. 120 between now and February 1, and the remaining 3000 of W. W. and 1500 barrels of P. W. 150 which we can depend upon getting would hardly be enough to supply other Central Texas Agencies during the balance of this month, even though you are agreeable to our getting it off, consequently, you will appreciate the importance of at once arranging to obtain a supply of a satisfactory grade of refined oil from some other source.

I noticed when in Corsicana that South Texas Division is drawing very heavily on Corsicana and in view of the rate to the larger

agencies in Central Texas Division being less than 25¢ per cwt. I would suggest that you shift Houston, San Antonio, Austin and other points in South Texas Division where the large gallonage is marketed, to some other supply point.

Please see my letter of Jan'y 8th, to Vice President Finlay and call his attention to this letter.

Yours truly, —— ——, *Manager.*

(210-629.)

Endorsed: No. 24,551. Filed May 31, 1907. D. J. Pickle, Clerk.

Copy.

Corsicana Oil.

CWC-1. JAN'Y 13, 1906.

1818 Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

DEAR SIR: As you of course understand, the Corsicana Ref. had on hand January 6th, about 5200 barrels finished, and 4000 barrels unfinished, or a total of 9200, 42 gal. barrels of S. W. 112, which is equivalent to 386,400 gals.—Add to this 6000 barrels or 252,000 gals. of W. W. 120, and 4000 barrels of 168000 gals. P. W. 150 which is the estimate output of the Refinery for January, would make a total of 806,400 gallons.

We should mark it in C. T. Division in Jan. very close to 600,000 gals. of Refined oil and as the South Texas Division continues to draw on Corsicana as heavily during the next three or four weeks as they have recently been doing, it is probable the entire stock of all grades of refined oil at Corsicana will be exhausted early in February.

This for your information.

Yours truly, —— ——, *Manager.*

(210-629.)

Endorsed: No. 24,551. Filed May 31, 1907. D. J. Pickle, Clerk.

Copy.

Orders No. 294 and No. 304.

CWC-1. FEB. 15TH, 1906.

Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

DEAR SIR: Replying to your letter of the 13th inst. in reference to the above mentioned orders which called for gasoline for shipment to Big Sps. and San Angelo.

1819 As we are forced to sell more or less of this gasoline on basis of engine naphtha prices, I think it would be advisable

to have the shipments made from Chaison, account of the gasoline which we are obtaining there costing less than the Corsicana gasoline.

As you no doubt appreciate, the demand for gasoline will increase from now on, and if the Security people are now behind to the extent of 16 cars with their orders, and we are not likely to get cleaned up within the next 30 days, we will certainly be in a very bad shape as the summer advances if we are forced to depend upon them for supplies and their out put is not materially increased. Can't you arrange to obtain a price from the Texas Co. or Gulf Ref. Co. on stove gasoline that would justify your drawing on them for that part of our supplies which cannot be obtained from the Security people.

The Corsicana Refinery have on hand to-day 6 tank cars of gasoline, and Agent Angus has on file the following orders for Corsicana gasoline to be shipped to points in this Division:

For Dallas Station	4 cars
For Corsicana Station	3 cars
For Ft. Worth Station	1 car
For Waco Station	1 car
	9 cars

We will send in at an early date orders for one car each of gasoline to be shipped to the following points:

Cleburne Ennis
Hillsboro Sherman
Weatherford

When sending in orders for the first 4 mentioned agencies, we will specify Corsicana gasoline and they can be sent there for shipment. These orders together with the gasoline which we will require at Dallas, Ft. Worth Waco and Corsicana will probably consume the present stock and out put of the refinery for some time to come.

Yours truly, ——— ———, *Manager.*

(216-630.)

1820 Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Estimate Output of Refinery.

CWC-1. FEB. 17TH, 1906.

Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

DEAR SIR: Referring to your wire of the 16th.

Supt. Plumley of the Corsicana Ref. Co. advises that it will be impossible for him to give us an estimate of their probable future out put until about the middle of next week. I will advise you promptly as soon as I obtain this information.

The Refinery had on hand at the close of business to-day: the following stock:

W. W. 120..... 300 Bbls.
P. W. 150..... 1200 Bbls.
S. W. 112..... 2500 Bls.
Gasoline..... 1200 Bbls

The 300 Bbls. of W. W. would have been shipped out to-day had we been able to get the cars placed for unloading. This oil will be loaded Monday and shipped on our orders for Mexia and Albany.

The refinery will not be able to give us any more W. W. oil until Thursday or Friday of next week, at which time, we will likely get seven or possibly eight cars all of which should be applied on orders which we now have on file at Corsicana.

Yours truly,

—— ——, *Manager.*

216-636.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk

Production at Corsicana.

October 30th, 1906.

Mr. C. W. Cahoon, Manager, Dallas, Texas.

1821 Dear Sir: Report of Agent Angus dated October 27th shows a decided increase in the estimate production of Eupion Oil for the week ending November 3rd. I assume that you are in touch with conditions at Corsicana, and will place sufficient orders to take care of the entire production.

Yours truly,

(Signed) A. M. FINLAY, *Vice Pres.*

p-e.
(216-630.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Reduction at Commerce.

CWC-1. Dec. 1st, 1905.

Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

Dear Sir: Your letter of the 29th inst. received.

Present selling prices of W. P. O. Co. and Competitors, and proposed schedule as given in our letter of Nov. 27th should have read as follows:

W. P. O. Co. Present Schedule	Schedule maintained by
P. W. Bulk & Bbls.—12½¢	G. R. Co. and Wyse Oil Co.
Eupion Bulk & Bbls. 15¢	Low grade Oil Blk. & Bbls.—10¢
	High grade Oil Bulk & Bbls. 12¢

Proposed schedule W. P. O. Co.
P. W. Bulk & Bbls.—11½¢
Eupion Bulk & Bbls. 12¢

The 1¢ reduction on refined oils asked for will still leave us 1½¢ on low grade and 2¢ on high grade oil, above competitors, and I

would strongly advise making this decline at once and later,
1822 we may be forced to make a further reduction.

The Gulf Ref. Co. agent at Commerce, also the Wyse Oil Co. at Greenville are naming a price on 12¢ per gal. on gasoline delivered at Commerce. While our schedule is 15¢ The Commerce gasoline trade does not amount to very much, and so far, these cuts have not materially affected the situation, tho if they continue to maintain a 12¢ price, it is probable we will have to reduce our schedule.

I will be obliged if you will authorize me by return mail to put in effect a reduction of 1¢ per gal. on both grades of refined oil, as asked for in our letter of the 29th.

Yours truly, —— ——, *Manager.*

Endorsed: # 24551. State of Texas *vs.* Waters Pierce Oil Company. Filed May 31, 1907. D. J. Pickle, Clerk. By J. A. Belger, Deputy. (10)

1823 Standard Oil Company.

W. P. Cowan, Vice President, 5 Wabash Avenue.

CHICAGO, *June 21st,* 1906.

Received Jun- 22, 1906.
Ans. ——.
A. M. Finlay.

Mr. A. M. Finlay, Vice Pres. Waters Pierce Oil Company, St. Louis, Mo.

DEAR SIR: Taking effect to-day, June 21st, our price on shipments of common oil from Neodosha and Sugar Creek will advance one-half cent per gallon.

As previously advised you, we have none of this oil at present, but notify you of this change in price *in case we make shipments later on.*

Yours truly, EDG. BOGARDUS.

Noted C C P. Noted GC. Noted R B B 6/22. Noted E H Avery Jun- 22 1906.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Refined Oil from Neodosha and Sugar Creek.

JUNE 22ND, 1906.

Mr. H. Clay Pierce, Chairman, New York, N. Y.

DEAR SIR: For your information, please note attached copy of Mr. Edgar Bogardus' letter, Chicago, June 21st.

We are now getting our supplies of common oil for St. Louis and the Missouri Division from Whiting, our present cost being,

F. O. B. Whiting..... 4.87¢
Freight to St. Louis..... 67¢

Delivered cost St. Louis..... 5.54¢

The cost at Neodosha, if we could get the oil there for St. Louis, would be,

1824 F. O. B. Neodosha..... 3.87 ¢
Freight to St. Louis..... 1.148¢

Delivered St. Louis..... 5.048¢

Yours truly,

——— ———,
Vice President.

P. S.—This advance of June 21st on P. W. 150 oil from Neodosha and Sugar Creek, makes the difference between the Whiting and the Neodosha F. O. B. billing price, 1¢ per gallon, the same as it was previous to June 11th, when we were notified of a reduction of ½¢ per gallon on refined oils at Corsicana and Whiting, and 1¢ per gallon at Neodosha and Sugar Creek.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Standard Oil Company.

W. P. Cowan, Vice President, 5 Wabash Avenue.

CHICAGO, *August 15th*, 1906.

Received
Aug. 16, 1906.
Ans. ———.
A. M. Finlay.

Mr. A. M. Finlay, Vice Pres. Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Confirming telegram to you today. Effective August 15th, our prices on refined oil f. o. b. Whiting and Corsicana will be as follows:

Common oil	4.25	(Corsicana only)
Common oil	4.375	(Whiting only)
Water White 110 to 120	4.875	
Eupion 120	6.125	
Water White 121 to 150	4.875	
Eupion 121 to 150	6.125	
Headlight 175	6	

Yours truly,

W. P. COWAN.
B.

Noted 8/17/06. C. M. Adams. Noted (Y)

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

1825 The Western Union Telegraph Company.

* * * * * * *

Received
Aug. 16, 1906.
Ans. ——.
A. M. Finlay.

Received at 412 and 414 Pine Street, St. Louis Mo.
27 BX Q My 86 Paid.

BX CHICAGO, ILL., *Aug.* 15, 1906.

A. M. Finlay, V. P. Waters P. Co., St. Louis, Mo.:

Taking effect today our price on water white one ten to one twenty and eupion one twenty declines one quarter sent per gallon and one half cent per gallon on waterwhite one twenty one to one fifty Eupion one twenty one to one fifty and headlight one seventy five this declin- from present basis F O B whiting corsicana sugarcreek and neodosha Effective today our price on common oil F O B Corsicana will be four and one quarter cent and three six twenty five F O B Sugarcreek and Neidesha.

W. P. COWAN [WATERS P. OIL CO.].*

335 pm.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Standard Oil Company.

W. P. Cowan, Vice President, 5 Wabash Avenue.

Received
Aug. 9, 1906.
Answered ——.

Received
Aug. 8, 1906.
Ans. ——.
A. M. Finlay.

CHICAGO, *Aug.* 7, 1906.

Received
Aug. 8, 1906.
Answered ——.
C. P. A.

Mr. A. M. Finlay, Vice Pres. W. P. O. Co., St. Louis, Mo.

DEAR SIR: For your information, our prices on Refined Oil and Napthas, in bulk, F. O. B. Sugar Creek or Neodosha, are as shown below. These prices effective July 9th:

[*Words enclosed in brackets erased in copy.]

Common Oil		3.875
	W. W. 110/120	4.125
1826	W. W. 121/150	4.375
	VM & P Naptha	9.375
62/65 Deod		9.375
Deod. Stove Gaso		10.375.

Yours truly,

W. P. COWAN.
B.

Noted 8/8/06. C. M. Adams. Noted 8/8/06. A. R. B. Backus.
L.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Standard Oil Company.

W. P. Cowan, Vice President, 5 Wabash Avenue.

Received
Aug. 9, 1906.
Answered ——.

Received
Aug. 8, 1906.
Answered ——.
C. P. A.

Received
Aug. 8, 1906.
Ans. ——.
A. M. Finlay.

CHICAGO, *Aug.* 7, 1906.

Mr. A. M. Finlay, Vice-Pres. W. P. O. Co., St. Louis, Mo.

DEAR SIR: Taking effect Aug. 3rd, our prices on Refined Oil, Naptha, and Gasoline, in bulk, F. O. B. Whiting and Corsicana, are as follows:

Common Oil	4.375	
W. W. 110/120	5.125	
Eupion 120	6.375	cut out*
W. W. 120/150	5.375	
Eupion 121/150	6.625	cut out*
Headlight 175	6.50	
V. M. & P. Naptha	8.875	
62/65 Deod	8.875	
Deod. Stove Gaso	10.125	
86 Gasoline	15.125	
87 Gasoline	16.125	

Yours truly,

W. P. COWAN.
B.

[* In pencil in copy.]

1827 Noted 8/8/06. C. M. Adams. Avery. Noted 8/8/06. R. B. Backus L.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Standard Oil Company.

W. P. Cowan, Vice President, 5 Wabash Avenue.

Received
Sept. 16, 1905.
Ans. 9/20.
A. M. Finlay.

CHICAGO, *Sept.* 15, 1905.

Mr. A. M. Finlay, President Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: For your information our price on refined oil, shipped from Whiting and Corsicana, effective Monday, Sept. 18th, will advance .50 cents per gallon, and on stove gasoline and other grades, up to and including 76 Naptha, from *Whiting, Corsicana, Neodesha,* and *Sugar Creek,* one cent per gallon.

No change on 62/65 and 86 and higher grades.

Yours truly, W. P. COWAN.

Noted G. P. Ackert. Noted J. P. G. M., Jr. S. Nattis. Please return A. M. F. Rundle Sep. 18, 1905.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Standard Oil Company.

W. P. Cowan, Vice President, 5 Wabash Avenue.

Received
Jul- 19, 1906.
Ans. ——.
A. M. Finlay.

CHICAGO, *July* 18, 1906.

Mr. Andrew M. Finlay, V.-P. Waters Pierce Oil Co., St. Louis, Mo.

1828 DEAR SIR: Replying to your letter of July 16th, regarding prices on 87 Gasoline in wood and iron barrels:

We quote you this grade in wood barrels at 18,875 cents per gallon; in iron barrels, 16.375 cents per gallon net f. o. b. Whiting, Ind.

Yours truly, W. P. COWAN.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

The Western Union Telegraph Company.

* * * * * * *

Received
Aug. 25, 1906.
Ans. ——.
A. M. Finlay.

Received
Aug. 25, 1906.
Ans. ——.
C. P. A.

15 Bx WP Mn 12 paid.

Received at 412 and 414 Pine Street, St. Louis, Mo.

Bx

CHICAGO, 8/25.

A. M. Finlay, V. P. Waters Pierce Oil Co., St. Louis, Mo.:

We cannot make any reduction in price V M and P Naptha.

W. P. COWAN.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Standard Oil Company.

W. P. Cowan, Vice President, 5 Wabash Avenue.

Received
Mar. 29, 1906.
Ans. ——.
A. M. Finlay.

CHICAGO, *March 28th*, 1906.

Mr. A. M. Finlay, Vice Pres. Waters Pierce Oil Co., St. Louis, Mo.

1829 DEAR SIR: Taking effect tomorrow, March 29th, our price on Naptha, gravity under 62, 62 to 65 and D. S. Gasoline advances one cent per gallon; Naptha gravity above stove, up to 72 inclusive, 1½ cent per gallon; 73 to 76, two cents and 68 to 90 one cent per gallon.

These advances to apply on shipments from Whiting, Corsicana, Neodesha and Sugar Creek.

Yours truly,

W. P. COWAN.
B.

C. M. A.—Noted C. M. A. R. B. B. Noted R. B. B. 3/29. C. P. A. Noted C. P. Ackert. W. Please note and return Noted G C.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Standard Oil Company.

Received
Apr. 6, 1906.
Ans. ——.
A. M. Finlay.

W. P. Cowan, Vice-Pres. Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Effective April 16th, our price on all grades of refined oil from Whiting and Corsicana will advance one-quarter of a cent per gallon; no change when from Sugar Creek or Neodesha.

Yours truly,
W. P. COWAN.
B.

[C. M. A.]* Noted Avery. C. P. A. Noted C. P. A. W. [R. B. B.]* Noted R. B. B. L. Recorded Apr. 16, 1906, G. D. M.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Standard Oil Company.

W. P. Cowan, Vice-President, 5 Wabash Avenue.

CHICAGO, *May 10th*, 1906.

Received
May 11, 1906.
Answered — S. K. W.

Received
May 11, 1906.
Ans. ——.
A. M. Finlay.

Mr. A. M. Finlay, Vice Pres. Waters Pierce Oil Co., St. Louis, Mo.

1830 DEAR SIR: Taking effect today, May 10th, our price on all grades of Naptha and Gasoline above *Stove* will advance one cent per gallon from Whiting, Corsicana, Sugar Creek and Neodesha.

Yours truly,
W. P. COWAN.

C. M. A. *C. M. A.* C. P. A. C. P. A. W. R. B. B. R. B. B. 5/11/6.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court, within and for the county and State aforesaid, do hereby certify that the within and foregoing on 12 pages contains true and correct copies of certain Letters and Telegrams, filed in cause No. 24,551, The State of Texas *vs.* Waters Pierce Oil Company, as the same appear on file in this office among the papers of said case.

[*Words enclosed in brackets erased in copy.]

Given under my hand and seal of office, at Austin, Texas, this the 7th day of August, A. D. 1907.

[SEAL.]

D. J. PICKLE,
Clerk District Court, Travis County, Texas.

Endorsed: With 4212. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas. Sep. 10, 1907. R. H. Connerly, Clerk.

1831 *Opinion of Court of Civil Appeals. Filed December* 11, 1907.

No. 4212.

THE WATERS-PIERCE OIL COMPANY, Appellant,
vs.
THE STATE OF TEXAS, Appellee.

Appeal from the District Court of Travis County.

This case involves alleged violations of the anti-trust laws of this State, and as the charge of the able judge who tried the case sufficiently states the nature of the suit as it was submitted to the jury, and correctly defines the provisions of the anti-trust statutes applicable to the case, and states the issues that were decided by the jury, it is deemed proper to set out the charge in full, which is as follows:

"GENTLEMEN OF THE JURY: In this case the State of Texas, as plaintiff, has sued the Waters-Pierce Oil Company, a private corporation chartered under the laws of the State of Missouri and doing business in Texas by virtue of a permit issued to it by the State of Texas on May 31, 1900, as defendant, to cancel said permit and to recover penalties for violations of the anti-trust laws of Texas which the State alleges the defendant has committed on each and every day from May 31, 1900, to April 29, 1907.

"The State alleges that on or about January 1st, 1870, John D. Rockefeller, John P. Archbold, H. H. Rogers, Henry M. Flagler, and a number of other persons conceived the scheme of monopolizing and controlling the business of refining, transporting and selling petroleum and the products thereof throughout the United States, including the State of Texas, and that said persons to that end and for that purpose entered into a conspiracy among themselves and with other individuals and corporations, including the defendant corporation, which conspiracy the State alleges continued in force
1832 and effect from the date of its formation until the date of the filing of the State's second amended petition in this case, and the State further alleges that in pursuance of said alleged conspiracy the defendant has done various acts and entered into various agreements which constitute violations of the anti-trust laws of Texas.

"The State further alleges that the defendant's predecessor, the Waters-Pierce Oil Company incorporated in 1878, on or about the 5th day of October, 1894, entered into a contract with the Eagle Refining Company, A. W. Clem and certain other individuals named in

its petition, by the terms of which defendant acquired the property of said Eagle Refining Company, situated in the city of Dallas, Texas, and the right to operate its business under the name of the said Eagle Refining Company. It further alleges that the defendant did, subsequent to May 31, 1900, operate said Eagle Refining Company and maintain the plant thereof at Dallas, as an apparently competing concern for various purposes prohibited by the anti-trust laws.

"The State further alleges that in the year 1896, the defendant's said predecessor bought out the business of the Texas Oil & Gasoline Company and of one Roy Campbell, who were at that time doing business in the city of San Antonio, Texas, and elsewhere, and entered into contracts and agreements with the said Texas Oil & Gasoline Company and Roy Campbell, whereby said Texas Oil & Gasoline Company was thereafter to be operated under said name by defendant as an apparently competing concern with defendant at San Antonio, in the sale of the products of petroleum. It further alleges that said Texas Oil & Gasoline Company was operated by defendant as a concern apparently competing with it at San Antonio subsequent to May 31st, 1900, for various purposes in violation of the anti-trust laws of the State. For full particulars of the
1833 State's allegations you are referred to its second amended original petition.

"The defendant denies all and singular the allegations of the State, and in addition to various of her special defenses, pleads specially that, if it has entered into any of the agreements or committed any of the acts alleged by the State, none of same constitute violations of the anti-trust laws of Texas, because said agreements were made and said acts done (if at all) solely with reference to subjects of interstate commerce. For full particulars of defendant's allegations, you are referred to its third amended original answer.

"As the law of the case you are instructed as follows, viz:

"I. The burden of proof rests upon the State to establish the affirmative of the issues which will hereafter be submitted in this charge for your consideration by a preponderance of the evidence, and you will find in favor of the defendant on each issue so submitted for your consideration, except such issue or issues, if any, as you find that the State has established by a preponderance of the evidence, and you will return a general verdict for the defendant, unless you find that the State has established by a preponderance of the evidence some combination or combinations of facts which will entitle it to recover under the law as it is given you in charge by the court.

"II. The statute known as the anti-trust law of 1899 was in force on May 31, 1900, and thereafter remained continuously in force until March 31st, 1903.

"For the purposes of this charge you are instructed that this act made it unlawful for any corporation transacting or conducting any kind of business in this State to enter into, or become a party to, any agreement or understanding with any other corporation or individual to fix or regulate the price in Texas of any article of manufacture or merchandise or to control or limit in Texas the trade in any article of manufacture or merchandise.

1834 "You are further instructed that said statute also made it unlawful for any corporation transacting or conducting any kind of business in this State to bring about or permit any union or combination of its capital, property, trade or acts with the capital, property, trade or acts of any other person or corporation, whereby the price in Texas of any article of manufacture or merchandise would be fixed or sought to be fixed, regulated or sought to be regulated; or whereby the price in Texas of any article of manufacture or merchandise would be reasonably calculated to be fixed or regulated, or whereby the trade in such article of manufacture or merchandise in Texas would be sought to be controlled or limited, or would be reasonably calculated to be controlled or limited.

"The statute known as the anti-trust law of 1903, became effective on March 31st., 1903, and has since continued in force. For the purposes of this charge you are instructed that this statute defines a trust to be a combination of capital, skill or acts, by two or more persons, firms, corporations or associations of persons, or either two or more of them, for either, any or all of the following purposes, viz:

"1. To create or which may tend to create or carry out restrictions in trade or commerce in Texas, or to create or carry out restrictions in the free pursuit in Texas of any business authorized or permitted by the laws of this State.

"2. To fix, maintain or increase the price of merchandise in Texas.

"3. To prevent or lessen competition in Texas in the sale of merchandise.

"4. To abstain from engaging in business or in the sale of merchandise in Texas, or any portion thereof.

"Said statute of 1903 further defines a monopoly to be a combination or consolidation of two or more corporations when effected in any of the following methods, viz:

"1. When the direction of the affairs of two or more cor-
1835 porations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create, a trust as above defined.

"2. When any corporation acquires the shares or certificates of stock, franchise or other rights, or the physical properties or any part thereof of any other corporation for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise.

"III. Oil, all other products of petroleum, and goods, wares or merchandise of any character which the defendant or its agents may have purchased or acquired in any manner outside of the State of Texas and caused to be transported to its agents or others within the state, are the subjects of interstate commerce when they enter this State, and so remain until such commodities are removed from the original tanks, vessels or other packages in which they are imported into the State and become mixed with the common mass of property of similar character in this State. The anti-trust laws of Texas have no reference to agreements or pools or arrangements of any character

concerning subjects of interstate commerce, and no agreement, pool or other arrangement, if any, which the defendant may have entered into with reference to the sale of any subject of interstate commerce can be considered by you as violating any anti-trust law of Texas. But neither oil purchased by the defendant from the Corsicana Refinery or elsewhere in Texas, nor other merchandise purchased by defendant at points in Texas, nor such oil or other merchandise purchased by defendant at points outside the State and transported into the State and removed from the original packages or vessels in which it was brought into the State and mingled with other property of similar character in the State, is the subject of interstate commerce, but on the contrary is the subject of local commerce, and any
1836 agreement or pool or arrangement entered into by defendant with reference to such property or the sale thereof, if any such sale there were, would be unlawful, if in violation of the anti-trust laws of this State.

"IV. A corporation such as defendant can only act through its agents and servants, but such a corporation is not liable for all of the acts of its agents or servants. It is liable, however, for the acts done in the scope of their employment and agency, and is also liable for the acts of its agents which it has authorized such agents to perform, and it is also liable for the unauthorized acts of its agents, if any, which have been knowingly acquiesced in or ratified by the governing body of said corporation.

"V. Much evidence has been introduced before you relating to the doings and agreements of the agents of corporations other than defendant, and to the doings and agreements of defendant's predecessor's agents prior to June 1st., 1900, and to the doings and agreements of defendant's agents, and the agents of other corporations, outside the State of Texas, and to the doings and agreements of individuals both prior and subsequent to June 1st., 1900, and both outside and within the State of Texas. None of this evidence is competent or can be considered by you against the defendant, except within the limitations and for the purposes hereinafter stated, viz:

"If you find from a preponderance of the other evidence in the case, independent of all declarations or statements made by any person or persons, except their evidence given while testifying by deposition or personally as witnesses on the trial of this case, that on June 1, 1900, there was formed or existed an agreement between the governing officers of defendant and the governing officers of any of the other corporations alleged in the State's petition to be co-conspirators with defendant relating to the manag-ment of defendant's business, or between the governing officers of defendant and any of the individuals alleged in the State's petition to be co-conspirators
1837 with defendant relating to the management of defendant's business, then you may consider for what, if anything, you think it worth, such acts or declarations of all the parties to said agreement, if any, and such acts and declarations of their authorized agents, if any, as were done or made, as the case may be, during the existence of said agreement, if any, and in furtherance of its execution, for the purpose of determining the character of said agreement,

and whether or not it contemplated a violation by defendant of the anti-trust laws of Texas.

"You may further consider for what, if anything, you think it worth as tending to show or explain the course of defendant's dealing in Texas, said evidence, if any, of what it did through its duly appointed and authorized agents, if any, outside the State.

"None of said evidence can be considered by you against the defendant for any other purpose whatsoever, and none of it can be so considered by you against the defendant for said purposes, except such of it, if any, as you think proper to be considered when tested by the rules above stated relating to its competency.

"VI. No agreement made by the defendant outside the State of Texas, to violate the anti-trust laws of Texas, if any such there were, can be made the basis for forfeiting its permit to do business in Texas, or for imposing penalties upon it, unless such agreement was executed or attempted to be executed in Texas by the duly authorized agents of defendant; but inasmuch as the undisputed evidence in the case shows that the defendant has continuously maintained its agents in this State and prosecuted its business therein since May 31, 1900, you will be authorized to convict it of violating the anti-trust laws of Texas, if you find from a preponderance of the evidence in favor of the State on the issues submitted for your consideration in paragraphs VII, VIII, IX, X or XI of this charge.

1838 "VII. If you find from a preponderance of the evidence that the defendant company, acting through its duly appointed and authorized agents, entered into or became a party to an agreement or understanding with the Standard Oil Company of New Jersey, on June 1, 1900, to fix or regulate the price in Texas of oil refined from petroleum, and if you further find from a preponderance of the evidence that the defendant company remained or continued to be a party to said agreement or understanding, if any, and persisted in carrying same out in Texas, if any, through its duly authorized agents on June 1, 1900, or on any other date or dates subsequent to June 1, 1900, and prior to March 31, 1903, and if you further find from a preponderance of the evidence that the oil with reference to which said agreement or understanding, if any, was so made and carried out, was the subject of local as distinguished from interstate commerce, you will return a verdict for the state and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph seven of the court's charge. You are instructed in this connection that if you find in favor of the State on the issue above submitted for your consideration in this paragraph of the charge, each day embraced between May 31, 1900 and March 31, 1903, during which the defendant remained a party to the agreement or understanding herein mentioned, if there were any such agreement or understanding, and if it remained a party to same on any of said days, would constitute a separate and distinct violation of the anti-trust laws of Texas.

"If you do no- find from a preponderance of the evidence that the defendant was on June 1st, 1900, or on some date subsequent thereto and prior to March 31, 1903, through the action of its duly ap-

pointed and authorized agents, a party to an agreement or understanding with the Standard Oil Company of New Jersey to fix or regulate the price in Texas of oil refined from petroleum, and
1839 if you do not further find from a preponderance of the evidence that the oil with reference to which defendant entered into said agreement or understanding, if any such there were, was the subject of loca-, as distinguished from interstate commerce, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph seven of the court's charge.

"VIII. If you find from a preponderance of the evidence that on June 1st.,1900, or on any date subsequent thereto and prior to March 31st., 1903, the defendant acting through its duly appointed and authorized agents, had brought about or permitted any combination or union of its capital of the Standard Oil Company of New Jersey, whereby the price in Texas oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or whereby the price in Texas of such oil would be reasonably calculated to be fixed or regulated, or whereby the trade in such oil in Texas was sought to be controlled or limited, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph eight of the court's charge. In this connection you are instructed that if the defendant became a party to a pool of the character mentioned in this paragraph of the charge, each day between May 31, 1900, and March 31, 1903, that it remained a party to such pool, if there were any such days, would constitute a separate violation of the anti-trust laws of Texas. If you do not find from a preponderance of the evidence that on June 1, 1900, or that on some date subsequent thereto and prior to March 31, 1903, the defendant acting through its duly appointed and authorized agents had brought about or permitted a combination or union of its capital with the capital of the Standard Oil Company of New Jersey, and if you do not further find from a
1840 preponderance of the evidence that by said combination or union, if such there were, the price in Texas of oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or that thereby the price in Texas of such oil was reasonably calculated to be fixed or regulated, or that thereby the trade in such oil in Texas was sought to be controlled or limited, you will say by your verdict, we the jury, find for the defendant on the issues submitted for our consideration in paragraph eight of the court's charge.

"IX. If you find from a preponderance of the evidence that the defendant, acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit in this State of the business of selling oil refined from petroleum, other than oil which was the subject of interstate as destinguished from local commerce, or to fix, maintain

or increase the price of such oil in Texas, or to prevent or lessen competition in Texas in the sale of such oil, and that the defendant remained or was a party to and acted under such combination, if such there were on March 31st., 1903, or any date subsequent thereto and prior to April 29th., 1907, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph nine of the court's charge. In this connection you are instructed that if the defendant became a party to a trust of the character mentioned in this paragraph of the charge, each day between March 30, 1903 and April 29th., 1907, that it remained a party to and acted under such trust, if there were any such days, would constitute a separate violation of the anti-trust laws of Texas.

"If you do not find from a preponderance of the evidence that the defendant, acting through its duly appointed and authorized
1841 agents, entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey, for the purpose of creating in Texas, or which tended to create or carry out in Texas restrictions in the free pursuit in this state of the business of selling said character and kind of oil, or to fix, maintain, or increase the price of such oil in Texas, or to prevent or lessen competition in Texas, in the sale of such oil, and that the defendant remained or was a party to, and acted under, such combination, if such there were subsequent to March 30, 1903, and prior to April 30, 1907, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph nine of the court's charge.

"X. If you find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on any date subsequent thereto and prior to April 29th., 1907, and that they were placed under such common management or control, if any, by their respectively authorized officers, under such circumstances, that such common management or control, if such there were, created or tended to create or carry out restrictions in the sale in Texas of oil of the kind and character mentioned in the last preceding paragraph of this charge, or to fix, maintain or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil, you will return a verdict for the state and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph ten of the court's charge. In this connection you are instructed that if the defendant entered into a monopoly of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29th., 1907, that it remained a party to such monopoly, if there were any such
days, constituted a separate violation of the anti-trust laws
1842 of Texas.

"If you do not find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the

same management or control on March 31, 1903, or on some date subsequent thereto and prior to April 29, 1907, and that they were brought under such a common management or control, if any, by their respectively authorized officers under such circumstances that such common management or control, if such there were, created or tended to create or carry out restrictions in the sale in Texas of such oil, or fix, maintain or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph ten of the court's charge

"XI. If you find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31, 1903, or on any date subsequent thereto and prior to April 29th., 1907, acquired a majority of the capital stock of the defendant corporation and thereby effected a combination of said two corporations, and if you further find from a preponderance of the evidence that said stock was acquired and combination effected, if any, with the purpose and intention on part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of the character and kind of oil above mentioned, or that the effect of said combination, if such there were, tended to affect or lessen the competition in the sale in Texas of said oil, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph eleven of the court's charge.

In this connection you are instructed that if the defendant
1843 entered into a monopoly of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29th., 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas.

"If you do not find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31, 1903, or on some date subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation, and if you do not further find from a preponderance of the evidence that said stock was acquired and combination effected, if it were at all, with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of said character and kind of oil, or that the effect of said combination, if such there were, tended to affect or lessen the competition in the sale in Texas of said oil, you will say by your verdict, we the jury find in defendant's favor on the issues submitted for our consideration in paragraph eleven of the court's charge.

"XII. The evidence introduced before you does not show with sufficient definiteness that the defendant has, since May 31st., 1900, acted under or persisted in the performance of either the contract with Clem and the Eagle Refining Company and others, or the contract with Roy Campbell and the Texas Oil & Gasoline Company, in

such a manner as to violate the anti-trust laws of 1899 or 1903. You are therefore instructed to find in defendant's favor on the issues pleaded by the State with reference to said contracts.

"XIII. Evidence has been introduced before you tending to show that the defendant has given rebates and discounts in the course of its dealings; evidence has also been introduced before you tending to show that defendant has made contracts and entered into
1844 understandings other than those which have been submitted for your consideration in paragraphs seven to eleven, inclusive, of this charge. Evidence has also been introduced before you tending to show the general course of dealings of defendant in Texas and elsewhere, including some of its business methods in meeting competition. You are instructed that none of this evidence shows or tends to show any violation of the anti-trust laws of Texas, unless it tends in some degree to establish some one or more of the issues submitted for your consideration in the last above mentioned paragraph of this charge; and you are therefore instructed to acquit the defendant and return a general verdict for it,—notwithstanding any and all of said evidence, unless you find in favor of the State on the issues submitted for your consideration in some one or more of said paragraphs of the charge.

"XIV. If you convict the defendant under the foregoing instruction of any violation or violations of the anti-trust law of 1899, you will specify in your verdict the date or days for which it is convicted of having violated said law, and will further specify in your verdict that for said violation or violations, if any your find, that its permit to do business in Texas shall be forfeited, and the amount of money which shall be adjudged against it as penalties for said violations, if any. In fixing the penalties, if any, which you assess against the defendant for any violations of which you may convict it, of the anti-trust law of 1899, you will fix same at not less than two hundred dollars, or more than five hundred dollars per day for each day you find it has so violated the law. If you convict the defendant of any violations of the anti-trust law of 1903, you will specify in your verdict the date or days for which it is so convicted and further specify therein that as a result of said conviction, its permit to do business in Texas shall be forfeited, and the sum of money that shall be adjudged against it as a penalty for such violation, fixing said sum at fifty dollars per day for each and every day that you convict it of having violated said law.

1845 "XV. In order to aid you in preparing your verdict in proper form, when you have reached same, the following forms of verdicts are submitted for your consideration:

"1. If you find in favor of the State on all of the issues submitted to you and for the entire time for which penalties are claimed by the State against the defendant in its petition, you will say: 'We the jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for the penalties at —— Dollars; and we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903,

and April 29, 1907, being fourteen hundred and eighty eight days, and fix the penalties at Seventy Four Thousand Four Hundred Dollars. We further find that the permit of the defendant to do business in the State of Texas should be cancelled. We find for the defendant upon all the issues made by the pleadings and not submitted in the charge of the court.'

"2. If you find in favor of the State on some of the issues submitted for your consideration, relating to the alleged violation of the anti-trust law of 1899, and in favor of the State with reference to some of the alleged violations of the anti-trust law of 1903, you may use the following form of verdict:

"We the jury find in favor of the State on the issues submitted for our consideration in the following paragraphs of the court's charge—

"We further find that the defendant violated the anti-trust laws of Texas on the following days embraced between May 31, 1900 and March 31, 1903—

"We further find that on account of said violations, the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the amount of —— Dollars. We further find that the defendant violated the anti-trust laws of 1903, on the following days embraced between the 30th day of March, 1903, and the 29th day of April, 1907—

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"We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the amount of —— Dollars. On all other issues raised by the pleadings, we find in favor of the defendant.

"3. If you find in favor of the State with reference to some or all of the alleged violations of the anti-trust law of 1899, submitted for your consideration, and if you find in favor of the defendant on other of said alleged violations, and if you find in favor of the defendant on the issue of all of the alleged violations of the anti-trust law of 1903, you may use the following form of verdict:

"We the jury find in favor of the State on the issues submitted for our consideration in the following paragraph of the court's charge ——. We further find that the defendant has violated the anti-trust laws of Texas on each of the following days embraced between May 31, 1900 and March 31, 1903 ——; we further find that because of said violations the permit of the defendant to do business in Texas should be forfeited and penalties should be imposed upon it in the amount of —— Dollars. We further find in defendant's favor on all alleged violations of the anti-trust laws of 1903, and on all other issues made by the pleading.

"4. If you find in defendant's favor on all issues submitted for your consideration relating to its alleged violation of the anti-trust laws of 1899, but find in favor of the State on all or some of the issues relating to defendant's alleged violation of the anti-trust law of 1903, you may use the following form of verdict: We, the jury,

find in defendant's favor on all issues submitted for our con-
1847 sideration relating to its alleged violation of the anti-trust laws of 1899, but find in favor of the State under the following paragraphs of the court's charge: ——, for alleged violations of the anti-trust laws of 1903. We further find that the defendant has violated said anti-trust laws on each of the following days embraced between March 30, 1903, and April 29, 1907, ——. We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the sum of —— Dollars.

"5. If you desire to return a general verdict for defendant you may use the following form of verdict: We the jury find for the defendant.

"XVI. You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to their testimony; but you are bound to take the law as it is given you in charge by the court, and to be governed thereby in arriving at your verdict."

All requested instructions were refused. The verdict of the jury reads as follows:

"We, the jury, find for the palintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties, 1,549,500.00 dollars.

"And we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty eight days, and fix the penalties at seventy four thousand four hundred dollars.

"We further find that the permit of the defendant to do business in the State of Texas should be cancelled.

"We find for the defendant upon all issues made by the
1848 pleadings and not submitted in the charge of the court."

The court rendered judgment for the State in accordance with the verdict for $1,623,900, and a cancellation of the defendant's permit to do business in this State. The defendant has appealed and presents the case in this Court on one hundred and twenty-nine assignments of error.

There is evidence in the record which supports the findings of the jury, and we find the facts to be as found by the verdict.

Opinion.

1. Assisted by elaborate briefs and arguments submitted by able counsel on both sides, this Court has given to this important case earnest and careful consideration. The volume of business on our docket and the great number of questions presented preclude extended consideration in this opinion of many of the questions raised in appellant's brief. We therefore announce, in general terms, our conclusion to the effect, that it is not shown that error was committed in overruling appellant's application for a change of venue, in various

rulings upon exceptions to pleadings, and as to admissibility of testimony.

A majority of the Court also hold that no positive error has been assigned upon the charge of the court. The writer of this opinion is of a different view concerning the 11th section of the charge, and concurs with counsel for appellant in their contention that it was calculated to mislead the jury into the belief that they could find against the defendant upon the issues therein submitted, regardless of whether it had any knowledge of, participated with, or aided or abetted the Standard Oil Company in the wrongful conduct therein referred to. The provision of the anti-trust statute of March 31, 1903, upon which the charge in question was evidently founded, seems to be addressed, in the main, against the corporation
1849 which acquires stock or other property of another corporation with the intention of using it for the purpose specified in the statute and it cannot properly be construed to include the corporation whose stock or property has been acquired, and subject it to the penalties prescribed by the statute, unless that corporation is, in some manner, responsible for the unlawful acts of the acquiring corporation.

These are my individual views, and the other members of the Court do not concur in the construction placed by me upon the charge. However, we are all agreed that if the charge in question be erroneous, it affords no ground for reversal, because the jury found that appellant had violated other provisions of the antitrust act of 1903, and awarded only one penalty for each day's violation. Having found for the State on these other issues, if the verdict had been in appellant's favor on the issue submitted by the charge under consideration, the judgment should have been the same; and therefore, if that section of the charge was erroneous, such error is now harmless and immaterial.

In reference to the assignments of error complaining of the order of the court appointing a receiver, it is sufficient to say that appellant has exercised its right to prosecute a separate appeal from that order, and this Court, in considering that appeal, has decided against appellant. It is not entitled to have the order appointing a receiver reviewed by this Court twice or in two distinct proceedings.

2. The constitutionality and validity of the anti-trust acts of May 25th, 1899, and March 31st, 1903, have been vigorously assailed in numerous respects. We overrule these objections and hold that these statutes authorize and sustain this suit. (State *vs.* Laredo Ice Company, 96 Tex., 467; Waters-Pierce Oil Co. *vs.* the State, 44 S. W., 936.)

The contention that these statutes are too indefinite and uncertain in the particulars involved in this case is not regarded as tenable.
The Sherman Anti-trust Law enacted by Congress is not more
1850 definite and specific than these statutes, and that Law has stood the test against similar objections in the Supreme Court of the United States. (United States *vs.* Knight Company, 156 U. S. 1; United States *vs.* Trans-Missouri Freight Ass'n. 166 U. S., 291; United States *vs.* Joint Traffic Ass'n, 171 U. S., 505; Hopkins *vs.*

United States, 171 U. S., 578; Anderson *vs.* United States, 171 U. S., 604; Addyston Pipe & Steele Co., *vs.* United States, 175 U. S. 211; Montague & Co. *vs.* Lowry, 193 U. S., 38; Northern Securities Company *vs.* United States, 193 U. S., 196.

3. This suit was instituted on September 22, 1906, and the defendant interposed a special exception to the petition in so far as it sought to recover penalties for alleged violation of the anti-trust laws of this State prior to the 22nd day of September, 1904, for the reason that it appeared from the face of the plaintiff's petition that the right to recover such penalties accrued more than two years before the suit was filed; and was therefore barred by the statute of limitation of two years, as prescribed in Art. 219, of the Code of Criminal Procedure of this State. That exception was overruled, and the court refused to give the jury a special instruction, requested by appellant, announcing and applying the same proposition of law. These rulings of the trial court are assigned as error, and present one of the most important questions in the case. Chapter 1 of Title 4 of the Code of Criminal Procedure is headed thus: "The time within which criminal actions may be commenced:" Art. 219 reads as follows: "For all misdemeanors an indictment or information may be presented within two years from the commission of the offense and not afterward."

By the Penal Code offenses which are punishable by pecuniary fine only are designated misdemeanors; and appellant's contention seems to be that the things condemned by the Act of May 25th, 1899, upon which this suit in part is based, constitute misdemeanors; and that, although civil in form, the suit is criminal in nature and
1851 barred by Art. 219 of the Code of Criminal Procedure. It is also contended that the pecuniary penalties imposed by the act of March 31, 1903, constitute part of the punishment prescribed by that act, and that the suit for the penalties accruing thereunder constitutes a criminal case, and is barred by Art. 218 of the Code of Criminal Procedure, which bars prosecutions for felonies.

The second, third, fourth and sixth sections of the act of May 25, 1899, declare that all persons, firms, corporations or associations of persons who violate those sections "shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act." The 11th section states that all who do the things therein condemned shall be "adjudged a monoply and be subject to all the pains and penalties provided in this act." The seventh section provides for the forfeiture of the charter of any domestic corporation and permit to do business granted to any foreign corporation for violations of the statute. The 5th section reads as follows: "Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this act shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalties in such cases to be recovered by an action in the name of the State at the relation of the

Attorney General or the district or County Attorney; the moneys thus collected to go into the State treasury, and to become a part of the general fund, except as hereinafter provided."

The pertinent part of the 9th section is expressed in these words: "It shall be the duty of the Attorney General and the prosecuting attorney of each district or county, respectively, to enforce the provisions of this act. The Attorney General and the prosecut-
1852 ing attorney shall institute and conduct all suits begun in the district courts, and upon appeal the attorney General shall prosecute said suits in the Courts of Civil Appeals and Supreme Court."

The first section of the anti-trust act of March 31st, 1903, defines a trust. The second section defines a monop-ly, and the third section prescribes what act shall constitute a conspiracy in restrain- of trade. The fourth section declares all trusts, monop-lies and conspiracies in restraint of trade to be illegal. The 5th, 6th and 7th sections make provision for the forfeiture of charters of domestic corporations violating that act, and the 8th section makes a similar provision in reference to the permit of foreign corporations to do business in this State. The 7th and 10th sections use the word "convicted", but the 7th relates to the subject of the forfeiture of charter rights, and the tenth to the subject of forfeiture of a foreign corporation's right to do business in the State, which shows that the Legislature did not have in mind a proceeding by indictment or criminal information. The 11th section reads as follows:

"Each and every firm, person, corporation or association of persons who shall in any manner violate any of the provisions of this act shall for each and every day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State of Texas in any county where the offense is committed or where either of the offenders reside, or in Travis County, and it shall be the duty of the Attorney General, or the district or county attorney, under the direction of the Attorney General, to prosecute for the recovery of the same, and the fees of the prosecuting attorney for representing the State in proceedings under this act shall be over and above the fees allowed him under the general fee bill."

The 13th section of that act reads as follows: "And in addition to the penalties and forfeitures herein provided for, every per-
1853 son violating this act may further be punished by imprisonment in the penitentiary not less than one nor more than ten years."

We agree with counsel for appellant that these statutes are penal. They were enacted for the purpose of suppressing and preventing certain things regarded by the Legislature as detrimental to the public interest. The penalties prescribed were intended as punishment, but it does not follow that this is a criminal case within the purview of Art. 219 of the Code of Criminal Procedure. After a careful consideration of all their terms, we have reached the conclusion that it was the intention of the Legislature in enacting the two statutes under consideration to create a cause of action in behalf of the State

for the pecuniary penalties therein prescribed, to be recovered in a civil suit. We reach this conclusion mainly from the language of the 5th section of the act of 1899, and the 11th section of the act of 1903. These sections declare that those who violate any of the provisions of those acts shall forfeit and pay, in the one instance not less than $200 nor more than $5000, and in the other instance $50, to be recovered in an action in the name of the State. It is true that in some places in these laws the procedure is designated "prosecutions", but in others they are spoken of as "actions" and "suits". In the 9th section of the act of 1899, it is declared to be the duty of the Attorney General and district and county attorneys "to institute and conduct all *suits* begun in the district courts, and upon appeal the Attorney General shall prosecute said *suits* in the Courts of Civil Appeals and Supreme Court."

Section 5 of that act, construed in connection with section 9, indicates with absolute certainty a legislative purpose to authorize civil suits for the recovery of the pecuniary penalties prescribed. The two sections together indicate that it was not intended that such penalties should be enforced by a criminal proceeding, because if
1854 that act creates a criminal offense such offense would be a misdemeanor, of which the district court would have no jurisdiction. The Constitution confers upon that court exclusive jurisdiction of suits by the State for forfeitures and penalties; and it must be presumed that in enacting that statute, the Legislature intended to provide for such suits as were authorized by that provision of the Constitution, and not to create criminal offenses of which the county court alone would have original jurisdiction, otherwise the Legislature would not have used the language, "shall institute and conduct all suits begun in the district courts."

It is true that both of these statutes contain some expressions common to criminal procedure, such as "offense", "guilty", and "convicted". The word "guilty" however, is frequently used in civil cases, as "guilty of fraud", "guilty of negligence". And the word "offense" as used in these statutes, has reference to violations of their provisions, and is not equivalent to the words "felony" or "misdemeanor". However, we do not hold that it is necessary to use either of the latter terms to create a criminal offense; nor, on the other hand, do we think that the words "offense", "guilty" and "convicted" necessarily determine that these are criminal statutes to be enforced exclusively by indictment or information. The word "suit" is very generally used to designate a civil case, and seldom if ever applied to criminal cases.

As these statutes do not, in terms, require a resort to criminal procedure for their enforcement, then, even if they do not direct any method of enforcement, we are of the opinion that the State had the right to proceed in a civil action for a recovery of the pecuniary penalties. In such cases it is a well established rule that an action of debt will lie for the recovery of statutory penalties. (5th Ency. Plead. & Prac. 907, and authorities there cited.) It has been so decided in this State in Davidson *vs.* Missouri Pacific Ry. Co.
1855 3 Tex. Crt. App., 173, where it was held that a suit to recover a statutory penalty was an action of debt, and barred by our

statute of limitation, which requires actions for debt, where the indebtedness is not evidenced by a contract in writing, to be commenced within two years. That the State may also bring an action for debt for the recovery of statutory penalties, seems to be equally well settled. It was so held by the Supreme Court of the United States in Stockwell *vs.* United States, 13 Wall., 531. That was an action by the government to recover double the value of certain shingles, alleged to have been illegally imported into the United States. The act of Congress upon which the suit was founded, reads as follows: "That if any person or persons shall receive, conceal or buy any goods, wares or merchandise, knowing them to have been illegally imported into the United States, and liable to seizure by virtue of any act in relation to the revenue, such person or persons shall, on conviction thereof, forfeit and pay a sum double the amount or value of the goods, wares or merchandise so received, concealed or purchased." In that case, among other things, the court said:

"A verdict and judgment having been recovered against the defendants in the court below, the record has been removed into this court and four errors have been assigned.

"The first is that a civil action of debt will not lie, at the suit of the United States, to recover the forfeitures or penalties incurred under this Act of Congress, and that the court below erred in holding that such an action might be maintained. It is not contended that an action of debt will not lie to recover duties, if the defendant be the owner or importer of the goods imported, for it is conceded that by the act of importing, an obligation to pay the duties is incurred. The obligation springs out of the statutes which impose duties. Nor is it doubted that when a statute gives a private person a right to recover a penalty for a violation of law he may maintain an action of debt, but it is insisted that when the Government proceeds for a penalty based on an offense against law, it must be by indictment or by information. No authority has been adduced in support of this position, and it is believed that none exists. It cannot be that whether an action of debt is maintainable or not depends upon the question who is the plaintiff. Debt lies whenever a sum certain is due to the plaintiff, or a sum which can readily be reduced to a certainty—a sum requiring no future valuation to settle its amount. It is not necessarily founded upon contract. It is immaterial in what manner the obligation was incurred, or by what it is evidenced, if the sum owing is capable of being definitely ascertained. The act of 1823 (3 Stat. at L. 781) fixes the amount of the liability at double the value of the goods received, concealed or purchased, and the only party injured by the illegal acts, which subject the perpetrators to the liability is the United States. It would seem, therefore, that whether the liability incurred is to be regarded as a penalty or as liquidated damages for an injury done to the United States, it is a debt, and as such it must be recoverable in a civil action.

1856

"But all doubts respecting the matter are set at rest by the fourth section of the act, which enacted that all penalties and forfeitures incurred by force thereof shall be sued for, recovered, distributed and

accounted for in the manner prescribed by the act of March 2nd, 1799 (1 Stat. at L. 627) entitled 'An Act to regulate the collection of duties on Imports and Tonnage'. By referring to the 89th section of that act, it will be seen that it directs all penalties accruing by any breach of the act, to be sued for and recovered, with costs of suit, in the name of the United States of America, in any court competent to try the same; and the collector within whose district a forfeiture shall have been incurred, is enjoined to cause suits for the same to be commenced without delay. This manifestly contemplates civil actions, as does the proviso to the same section, which declares
1857 that no action or prosecution shall be maintained in any case under the act, unless the same shall have been commenced within three years after the penalty or forfeiture was incurred. Accordingly, it has been frequently ruled that debt will lie at the suit of the United States, to recover the penalties and forfeitures imposed by statutes. U. S. *vs.* Colt. Pet. (C. C.) 145; Jacob *vs.* U. S., 1 Brock., 520; U. S. *vs.* Bougher, 6 McLean, 277; Walsh *vs.* U. S., 3 Wood. & M. 342; U. S. *vs.* Lyman, 1 Mas. 482; U. S. *vs.* Allen, 4 Day, 474. It is true that the statute of 1823 imposes the forfeiture and liability to pay double the value of the goods received, concealed or purchased with knowledge that they had been illegally imported, 'on conviction thereof'. It may be, therefore, that an indictment or information might be sustained. But the question now is whether a civil action can be brought and, in view of the provision that all penalties and forfeitures incurred by force of the act shall 'be sued for and recovered' as prescribed by the act of 1799, we are of the opinion that debt is maintainable. The expression 'sued for and recovered' is primarily applicable to civil actions, and not to those of a criminal nature."

As to the point made in reference to the penalties being indefinite under the act of 1899, in addition to the case just cited, we refer to Rockwell *vs.* the State, 11 Ohio, 130, where the law fixed the penalty at not less than $5 nor more than $50, and the objection referred to was overruled, and it was held that an action of debt would lie. Other courts have held that statutes somewhat similar to those under consideration confer upon the State a cause of action to be maintained in a civil suit (Burgh *vs.* the State, 118 Ind., 133; Davis Admr. *vs.* State, 119 Ind., 555; State *vs.* Grove, 77 Wis., 448; Territory of New Mexico *vs.* Baca, 2 New Mex. 183.) Interesting discussions of the terms "fines", "forfeitures" and "penalties" will also be found in People *vs.* Nedrow, 122 Ill., 363; Gosselink *vs.* Campbell, 4 Iowa, 300.

Our conclusion is that the statutes under consideration vest
1858 in the State a civil right of action for the pecuniary penalties prescribed for violations of the provisions of those statutes. This being true, and as our statute of limitations applicable to civil cases does not include and bar the State, we hold that limitation is not available as a defense in this case. We do not rest this ruling upon the ground that the statutes under consideration do not create criminal offenses. If it be conceded that they create such offenses, criminal prosecutions for which would be barred within two

years, it does not follow that the penalties which might have been recovered by such prosecutions cannot when authorized, be recovered in a civil action. Our Penal Code and Code of Criminal Procedure deal exclusively with criminal cases, and that portion of the latter which deals with the subject of limitation only purports to fix the time within which criminal actions may be commenced; and Art. 219, relied on by appellant, merely forbids prosecutions by indictment or information after two years from the commission of the offense.

It is argued on behalf of appellant that, even though a statute creating an offense may confer upon the State the right to maintain a civil action to recover a pecuniary penalty for violating the statute, still that right would be barred by Art. 219, which would bar the right to enforce the penalty by indictment or information. If Art. 219, or any other statute, declared that no right of action should exist or no sort of proceeding be instituted for the collection of a penalty after two years, appellant's contention would be correct; but that article is much narrower in its scope and merely prohibits prosecutions in the manner and by the means prescribed for the prosecution of criminal cases. It may be true that the same general result would be sought in the one case as in the other, viz: recovery of the penalty, and if that were the only thing to be considered, there would be force in the argument that in prohibiting criminal prose-
1859 cutions after a specified time the Legislature intended thereby to prevent any other character of procedure which had for its purpose the accomplishment of the same general result. If the two proceedings, civil and criminal, were not so essentially different the contention urged might be sustained; but the statutes under consideration apply to natural persons as well as corporations, and as to such persons, civil and criminal proceedings are widely different. In a civil action against an indivdual to recover a penalty he is notified of the suit by delivering to him a citation. When the case is tried, if he loses, the only result is a personal judgment against him for a specified sum of money to be collected by execution and not otherwise. But if he is proceeded against criminally for the enforcement of a penalty he is arrested and required to give bond or stay in jail until after the case is tried. Upon trial, if he is convicted, the judgment not only goes against him for the penalty, but unless he pays it, he is again incarcerated in jail. Thus it will be seen that in a criminal proceeding to enforce the penalty the defendant would necessarily be subjected to the ignominy of an arrest by a public officer; and, upon contingencies which often occur, would be incarcerated in jail. Now when the Legislature prescribed a time which would prevent a prosecution fraught with these serious consequences, does it necessarily follow that it intended to cut off any right the State might have to obtain a personal judgment for a pecuniary penalty, without resorting to a procedure that would bring about any such harsh results? We think not. In prescribing limitation for criminal proceedings we believe the Legislature had in mind cases criminal, both in substance and form, and had no intention of affecting any right the State might assert in a civil action.

Chief Justice Marshall, in Adams *vs.* Woods, 2 Cranch, 337, announced that if a law should merely declare that no indictment or information should be presented after a specified time, such
1860 law would be pleadable only in bar of indictments or informations, and would not bar a civil action for a recovery of the penalty prescribed for violating a statute.

An offense which is punishable by imprisonment in the penitentiary absolutely or in the alternative, is a felony; and as the anti-trust act of 1903 fixes confinement in the penitentiary as an alternative punishment, appellant pleaded Art. 218 of the Code of Criminal Procedure in bar of the State's right to recover part of the penalties sued for under that act. Art. 218 is framed like Art. 219, and would apply to a criminal prosecution based upon the act of 1903 and bar such prosecution after three years. As we hold that it was the intention of the Legislature to confer upon the State the right to maintain a civil action for the pecuniary penalties therein prescribed, we hold that such right of action is not barred by Art. 218. In other words, while the penalties referred to were intended, in a certain sense, as punishment, they were not imposed as punishment to be inflicted through the onerous instrumentalities of a criminal prosecution.

Appellant also pleaded the statute of limitation of two and four years embodied in the Revised Statutes and applicable to civil cases. It is contended that the two years' statute has application upon the theory that if the State's suit is an action of debt, and not instituted for the preservation of the public rights, revenues or property, then the State should not be exempt from limitation, but should be treated as any other litigant. It is the rule of the common law of England that unless so expressly enacted, limitation does not run against the sovereign, and that is the rule in the American states. We are not prepared to place upon that rule the restriction urged, but if we should do so it would not be proper to apply it to this case. In seeking to recover the penalties here involved, the state is endeavoring to enforce statutes enacted for the protection of the public interest. One of the main objects of the suit is to protect and preserve public rights and promote a well established public policy.
1861 In view of what we have already said it is hardly necessary to add that we regard the four years' statute of limitation as equally unavailing. In Brown *vs.* Sneed, 77 Tex., 471, which holds that limitation does not apply to the State unless so expressly provided, the authorities are collated and reviewed. We also hold that no error was committed in refusing a charge to the effect that the state must prove its case beyond reasonable doubt. Being a civil case that rule does not apply.

4. It is contended on behalf of appellant that the anti-trust act of May 25th, 1899 was rendered unconstitutional by the passage of another statute at the same session of the Legislature entitled "An Act to protect workingmen in the right of organization and the purposes thereof," approved May 27th, 1899, wherein it was provided that from and after its passage it should be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to

associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor and personal service in their respective pursuits and employments. By the third section it is declared that that act shall not apply to combinations or associations of capital or capital and persons natural or artificial formed for the purposes of limiting the production or consumption of labor's products, or for any other purpose in restraint of trade, and that nothing therein contained shall be held to interfere with the terms and conditions of private contracts with regard to the time of service or other stipulations between employers and employés, and "that nothing herein contained shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies." In view of these limitations placed upon that act, we are of the opinion that it was not the intention of the Legislature to authorize anything to be done that was prohibited by the act of May 25th, 1899. Hence we
1862 hold that this statute engrafts no exemptions upon the anti-trust statute referred to.

5. The anti-trust statute of May 25th, 1899, having been superseded and repealed by the act of March 31st, 1903, which diminished the pecuniary penalties, appellant sought to have the latter statute applied to the time before as well as after it went into effect. This was refused, and we think properly so, on account of this proviso in the latter act: "provided nothing in this act shall be held or construed to affect or destroy any rights of the State of Texas to recover penalties or forfeit charters of domestic corporations, or prohibit foreign corporations from doing business in this State, for acts committed before this act took effect." We are of opinion that this proviso preserved whatever rights the State had under the former law, including the right to enforce the penalties prescribed by that act. We are unable to concur in the proposition that it was merely intended to preserve the right to, but not the amount of, the penalties. Nor can we sanction the proposition that because of the location of a comma in the proviso quoted, it was the intention of the Legislature to protect and preserve the rights of the State to recover penalties from domestic corporations and not preserve such right as against foreign corporations. No reason existing for making such a marked discrimination, we are not willing to hold that it was the intention of the Legislature to do so, merely because a comma was so used as to render that construction plausible. In construing written laws courts are not bound by rules of grammar, and may disregard them in order to give effect to manifest legislative intention.

6. It is claimed that the trial court should have granted appellant's motion for a new trial based upon the ground that the judgment imposes excessive fines, and operates as a deprivation of property without due process of law. It is also contended that the
1863 act of 1899 should be declared void, because it authorizes excessive fines and forfeitures. That question has already been decided against appellant's contention in State *vs.* Laredo Ice Co., 96 Tex., 467. The verdict, while large, is much under the maximum

permitted by the law. Its magnitude is mainly attributable to appellant's repeated and long-continued violations of the law, covering a period of six years. Hence we have reached the conclusion that the verdict is not so large as to render it manifest that the jury were actuated by prejudice or other improper motives.

7. In appellant's motion for a new trial in the court below, and in its presentation of the case here, the verdict of the jury has been challenged, the contention being that the testimony fails to show that appellant has violated any of the anti-trust laws of this State. The evidence is very voluminous, and it is not necessary that it be set out or epitomized in this opinion. It is sufficient, we think, to show that from the date of its permit to do business in this State, May 31, 1900, appellant has been a party to an agreement or understanding with the Standard Oil Company of New Jersey, one object of which was to create a monopoly and control the price of petroleum oil and prevent competition in its sale in a large and specified territory, including the State of Texas; and that, to a large extent, such object has been accomplished. In so far as that agreement related to this State, appellant, acting by its agents, performed it within this State; and such performance within the limits of the State constitutes violations of Texas laws and renders appellant amenable to such laws, although the agreement between it and the Standard Oil Company may not have been made in this State. To a large extent the case rests upon circumstantial evidence; but we cannot say that the jury were not warranted in the conclusions drawn from it. Hence we hold that the verdict is supported by
1864 testimony, and no error was committed in overruling the motion for a new trial.

Upon the whole case our conclusion is that reversible error has not been shown, and therefore the judgment will be affirmed.

Affirmed.

W. M. KEY,
Associate Justice.

Filed Dec. 11, 1907.

Endorsed: With App. No. 5744. No. 4212. The Waters Pierce Oil Co., Appellant, *vs,* The State of Texas, Appellee. Appeal from Travis County. Opinion. Affirmed. W. M. Key, Associate Justice. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, Dec. 11, 1907, R. H. Connerly, Clerk. Filed in Supreme Court Feb. 13, 1908. F. T. Connerly, Clerk.

Judgment of Court of Civil Appeals. Rendered December 11th, 1907.

No. 4212.

WATERS PIERCE OIL COMPANY
vs.
THE STATE OF TEXAS.

Appeal from District Court of Travis County

Opinion by Associate Justice KEY:

This cause came on to be heard on the transcript of the record, and, the same being inspected, because it is the opinion of the court that there was no error in the judgment; it is therefore considered, adjudged and ordered that the judgment of the court below be in all things affirmed; that the appellee, The State of Texas, do have and recover of and from the appellant, The Waters Pierce Oil Company, principal and its sureties, The American Surety Company of New York and Jno. H. Kirby, the amount adjudged by the court below and all costs in this behalf expended and this decision be certified below for observance.

1865 Appellant's Motion for a Rehearing, Filed Dec. 24th, 1907.

No. 4212.

In the Court of Civil Appeals, Third Supreme Judicial District of Texas.

WATERS PIERCE OIL COMNANY, Appellant,
vs.
THE STATE OF TEXAS, Appellee.

Appellant's Motion for Rehearing.

Now comes the appellant, The Waters Pierce Oil Company, by its attorneys, and moves this court to set aside its judgment herein rendered on December 11th, 1907, affirming the judgment of the
1866 trial court, and to grant appellant a rehearing in this cause, for the following reasons:

1.

Because this Court erred in holding that it was not error for the trial court upon the hearing of appellant's motion for a change of venue, to refuse to permit appellant to prove by the witnesses C. J. Johnson and H. M. Metz that they were members of the grand jury of the District Court of Travis County for the Fifty-third Judicial District at the September Term, 1906, and that the indictment

against H. C. Pierce charging him with false swearing in making the affidavit set out in plaintiff's petition, and therein alleged to have been made by him on May 31st, 1900, was returned by said grand jury without having any evidence before it other than the said affidavit, and without having any evidence before it showing, or tending to show that the statements contained in said affidavit were false.

2.

Because, upon the hearing of appellant's motion for a change of venue in the trial court, it was shown by the preponderance of evidence and the manifest weight of the testimony that there existed in Travis County so great a prejudice against appellant that it could not obtain a fair and impartial trial of this cause in said county, and this court erred in not so holding.

3.

Because plaintiff's petition was, by reason of the matters complained of in appellant's assignments of error Nos. 5 to 19, inclusive, in violation of Article 1183 of the Revised Statutes and rule 2 of the rules for the district and county courts, in that it was, as shown by said assignments of error and appellant's statements and propositions thereunder, a statement of alleged facts so intermingled with irrelevant, impertinent, scandalous and inflammatory matter, arguments and legal conclusions as to produce confusion and uncertainty and unnecessary length in the petition, and was calculated to inflame the minds of the jury trying this case against appellant, and to prevent justice being done upon
1867 the trial of this case, and this court erred in not holding that it was error for the trial court to refuse to direct a repleader by plaintiff and the ommission from the petition of such irrelevant, impertinent, scandalous and inflammatory matter, arguments and legal conclusions, as contended by appellant in its 19th assignment of error, and propositions thereunder.

4.

Because this court erred in holding that the Anti-trust Act of May 25th, 1899, was not repealed by the Anti-trust Act of March 31st, 1903.

5.

Because this court erred in not holding that the proviso contained in Section 17 of the Act of March 31st, 1903, whereby it was sought to preserve to the State the right to recover penalties and forfeit charters and permits on account of acts committed before said Act took effect, was in violation of Section 35, Article 3 of the Constitution of this State, in that the subject of said proviso was not expressed in the title of said Act, but was excluded by the provisions of said title, as contended in appellant's second proposition under its 20th assignment of error.

6.

Because, since it was shown by plaintiff's petition that appellant is a foreign corporation, this court erred in holding that Section 17 of the said Act of March 31st, 1903, preserved to the State the right to recover of appellant penalties on account of violations of the Anti-trust Act of May 25th, 1899.

7.

Because the court erred in holding that plaintiff's cause of action to recover penalties against appellant for acts committed more than two years before the institution of this suit was not barred by the provisions of Article 219 of the Code of Criminal Procedure of this State.

8.

Because this court erred in not holding, as contended by appellant in its proposition under its 23rd assignment of error, that to
1868 hold that plaintiff's cause of action to recover penalties against appellant for acts committed more than two years before the institution of this suit, was not barred by the provisions of Article 219 of the Code of Criminal Procedure of this State, would result in taking appellant's property without due process of law and deny to appellant the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

9.

Because this court erred in holding that plaintiff's cause of action to recover penalties of appellant for acts committed more than two years before the institution of this suit was not barred by the statute of limitation of two years, as prescribed in Article 3354 of the Revised Civil Statutes of Texas.

10.

Because this court erred in holding that plaintiff's cause of action to recover penalties of appellant for acts committed more than four years before the institution of this suit was not barred by the statute of limitation of four years, as prescribed in Article 3358 of the Revised Civil Statutes of Texas.

11.

Because this court erred in holding that plaintiff's cause of action to recover penalties of appellant for acts committed more than three years before the institution of this suit, in violation of the Anti-trust Act of March 31st, 1903, was not barred by the statute of limitation of three years, as prescribed in Article 218 of the Code of Criminal Procedure of this State.

12.

Because this court erred in not holding, as contended by appellant in its proposition under its 29th assignment of error that to hold that plaintiff's cause of action to recover penalties of appellant for

violations of the Anti-trust Act of March 31st, 1903, committed more than three years before the institution of this suit, was not barred by the provisions of Article *of Article* 218 of the Code of Criminal Procedure of this State, would result in denying to
1869 appellant the equal protection of the laws, as guaranteed to it by Section I of the Fourteenth Amendment to the Constitution of the United States.

13.

Because this court erred in holding that that portion of Section 2 of the Anti-trust Act of May 25th, 1899, wherein a "monopoly" is defined as "Any union or combination or consolidation or affiliation of capital, credit, prpoerty, assets, trade, custom, skill or acts, or of any other valuable thing or possession, by or between persons, firms, or corporations, or associations of persons, firms or corporations, whereby any one of the purposes or objects mentioned in this Act is accomplished, or sought to be accomplished, or whereby any one or more of said purposes are promoted or attempted to be executed or carried out, or whereby the several results described herein are reasonably calculated to be produced", sufficiently defines an offense against the laws within the requirements of Article 3 of the Penal Code of this State, then overruling appellant's first proposition under its 30th, 31st, 33rd, 34th, 35th and 36th assignments of error,

14.

Because this court erred in holding that that portion of Section 2 of said Act of May 25th, 1899, defining a monop-ly as above quoted, sufficiently designates an offense within the requirements of Article 6 of the Penal Code of this State, thus overruling appellant's second proposition under its 30th, 31st, 32nd, 33rd, 34th, 35th and 36th assignments of error.

15.

Because this court erred in holding that that portion of Section 2 of the Anti-trust Act of May 25th, 1899, defining a monop-ly as above quoted, sufficiently defines an offense against the laws within the requirements of Article 9 of the Penal Code of this State, thus overruling appellant's third proposition under its 30th, 31st, 32nd, 33rd, 34th, 35th and 36th assignments of error.

1870 16.

Because this court erred in holding that that portion of Section 6 of said Anti-trust Act of May 25th, 1899, which provides, "If any two or more persons or corporations who are engaged in buying or selling any article of commerce, shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit trade in any such article or thing * * * it shall be a violation of this Act * * *" sufficiently defines an offense within the requirements of Article 3, 6 and 9 of the Penal Code of this State, thus overruling appellant's 4th 5th and sixth propositions under its 30th, 31st, 32nd, 33rd, 34th, 35th and 36th assignments of error.

17.

Because this court erred in holding that Section 1 of the Anti-trust Act of March 31st, 1903, purporting to define a trust sufficiently designates an offense against the laws within the rules prescribed by Articles 3, 6 and 9 of the Penal Code of this State.

18.

Because this court erred in holding that Section 2 of the Anti-trust Act of March 31st, 1903, wherein it purports to define a monop-ly, sufficiently designates an offense against the laws within the rules prescribed by Articles 3, 6 and 9 of the Penal Code of this State.

19.

Because this court erred in not holding that the provisions of Section 2 of the Anti-trust Act of May 25th, 1899, purporting to define a monop-ly, do not define an offense against the laws with such definiteness and certainty as is necessary to constitute due process of law under the Fourteenth Amendment to the Constitution of the United States, and in thus overruling appellant's 44th assignment of error and propositions thereunder.

20.

Because this court erred in not holding that the 6th Section of said Act of May 25th, 1899, whereby it is provided, "If any
1871 two or more persons or corporations who are engaged in buying or selling any article of commerce * * * shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing * * * it shall be a violation of this Act * * *", does not define an offense against the laws with such definiteness and certainty as is necessary to constitute due process of law under the provisions of the Fourteenth Amendment to the Constitution of the United States, as contended by appellant in its 44th assignment of error and propositions themselves.

21.

This court erred in not holding that the 1st Section of the Anti-trust Act of March 31st, 1903, does not define an offense against the law with such definiteness and certainty as it necessary to constitute due process of law under the provisions of the Fourteenth Amendment to the Constitution of the United States, as contended by appellant in its 45th assignment of error and propositions themselves.

22.

Because this court erred in not holding that the 2nd Section of the Anti-trust Act of March 31st, 1903, does not define an offense against the laws with such definiteness and certainty as is necessary to constitute due process of law under the provisions of the Fourteenth Amendment to the Constitution of the United States, as con-

tended by appellant in its 45th assignment of error and propositions thereunder.

23.

Because this court erred in not holding that the 3rd Section of the Anti-trust Act of March 31st, 1903, does not define an offense against the laws with such definiteness and certainty as is necesasry to constitute due process of law, under the provisions of the Fourteenth Amendment to the Constitution of the United States, as contended by appellant in its 45th assignment of error and propositions thereunder.

24.

Because this court erred in holding that the Anti-trust Act
1872 of May 25th, 1899, was not unconstitutional and not in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, by reason of the fact that it provided that it should be cumulative of all laws then in force in the State, and the fact that the Anti-trust Act of 1899, by the 13th Section thereof, and the Anti-trust Act of 1895, by the 12th Section thereof, expressly exempted producers of agricultural products and the raisers of live stock from the pains and penalties therein imposed upon all other persons and classes of persons, thus overruling appellant's first proposition under its 46th assignment of error.

25.

Because this court erred in holding that the Anti-trust Act of May 25th, 1899, was not rendered unconstitutional and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States by the passage of another statute at the same session of the Legislature entitled, "An Act to protect working men in the right of organization and the purposes thereof", approved May 27th, 1899, wherein it was provided that from and after its passage it should be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor and personal service in their respective pursuits and employments, and in thus overruling appellant's propositions under its 47th assignment of error.

26.

Because this court erred in holding that the Anti-trust Act of March 31st, 1903, is not unconstitutional and not in violation of the Fourteenth Amendment to the Constitution of the United States, by reason of the fact that said Act of March 31st, 1903, did not repeal the Act of the Legislature of Texas of May 27th, 1899 entitled "An Act to protect working men in the right of organization and the purposes thereof", and in holding that the provisions of said statutes do not deny to appellant the equal protection of the law as guaranteed
to it be said Amendment to the Constitution *to* the United
1873 States, and in thus overruling appellant's proposition under its 48th assignment of error.

27.

Because this court erred in holding that the Anti-trust Act of March 31st, 1903, is not in violation of Section 14, Article 1 of the Constitution of Texas, providing that no person for the same offense shall twice be put in jeopardy of life or liberty, nor shall any person again be put upon trial for the same offense after a verdict of not guilty in a court of competent juri-*dcition*, by reason of the fact that Section 11 of said Act provides that every person or corporation who shall violate any of the provisions of said Act shall, for each and every day that such violation shall be committed or continued, forfeit and pay the sum of Fifty Dollars, and Section 13 provides that in addition to the penalties and forfeitures therein provided for, every person violating said Act may further be punished by imprisonment in the penitentiary for not less than one nor more than ten years, and in thus overruling appellant's proposition under its 49th assignment of error.

28.

Because this court erred in not holding that in as much as an acquittal or conviction of a person prosecuted by an action civil in form brought by the Attorney General, or by the district or county attorney under his direction, for penalties under Section 11 of the Anti-trust Act of March 31st, 1903, is a bar to an indictment for a felony, authorized by the 13th Section of said Act, said Act does not guarantee to all persons within this State the equal protection of the law, nor does it secure the infliction of the same character of punishment upon all persons within the jurisdiction of this State who are guilty of violating its provisions, by reason of the fact that the Attorney General, or district or county attorney under his direction, may prevent the infliction upon the person of a greater punishment for the violation of the provisions of said Act than a fine of Fifty Dollars per day by the institution of a civil action against such person to recover penalties, while said officers may elect to have another person violating its provisions indicted and convicted of a fel-
1874 ony and confined in the penitentiary for a term of from one to ten years, and that, therefore, the said Act is in violation of that part of the Fourteenth Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, as contended by appellant in its proposition under its 50th assignment of error.

29.

Because this court erred in overruling the contention of appellant in its proposition under its 51st and 52nd assignments of error, wherein appellant contended that it was not within the constitutional power of the Legislature of the State of Texas to subject defendant to the penalties and forfeitures declared by the Anti-trust Act of March 31st, 1903, because of the fact that at the time of the passage of said Act the Standard Oil Company of New Jersey held, and continued to hold, a majority of the stock of appellant, and that to inflict penalties upon appellant because of such stock ownership would make the said Act of March 31st, 1903, an *ex post fact-* law, in viola-

tion of Sub-division 1, Section 10, Article 1, of the Constitution of the United States, providing that no state shall pass any *ex post facto* law, or law impairing the obligation of contracts, and would result in depriving appellant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

30.

Because this court erred in not holding that the Anti-trust laws of the State of Texas are limited to agreements, combinations, etc. between persons and corporations actually engaged in business within the State, and in not holding that it could not be an offense against the laws of the State of Texas for the Standard Oil Company of New Jersey, as a foreign corporation which had no permit to do business in the State, to hold stock in appellant company and to agree that it would not do business in the State in competition with appellant, as contended by appellant in its 53rd and 54th assignments of error,
1875 and the action of this court in not sustaining said assignments of error results in denying to appellant the protection of Sub-division 3, Section 8, Article 1, of the Constitution of the United States, which gives to Congress the power to regulate the commerce between the States, and also denies to appellant the protection of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides that no state shall deprive any person of property without due process of law nor deny to any person within its jurisdiction the equal protection of the law.

31.

Because this court erred in not holding that since the Standard Oil Company of New Jersey was a manufacturing corporation, while appellant was a dealer and distributer of the manufactured articles, it could not be made an offense against the laws of the State of Texas for said Standard Oil Company to agree not to enter into competition with appellant as such dealer, as contended by appellant in its 55th and 56th assignments of error, and the action of this court in not sustaining said assignments of error denies to appellant the protection of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides that no state shall deprive any person of liberty or property without due process of law.

32.

Because this court erred in not holding that since appellant was a corporation created by the laws of the State of Missouri, it was not within the power of the State of Texas to prescribe who shall be qualified to own its stock, or make it a penal offense against appellant because of the fact that the Standard Oil Company of New Jersey owns a part of its stock, as contended in appellant's 57th and 58th assignments of error violates Section 1, Article 4, of the Constitution of the United States, which declares that full faith and credit shall be given to the public acts of each state.

33.

Because this court erred in not holding that since the Standard Oil Company of New Jersey was the owner of a part of the stock of the old Waters Pierce Oil Company, and had acquired its
1876 stock prior to the passage of the Anti-trust Acts of 1899 and 1903, that the interest of said Standard Oil Company in the property of said old Waters Pierce Oil Company was a vested right, and upon its dissolution, that said Company, as a tenant in common with the other stockholders, had the legal right to acquire stock in the new Waters Pierce Oil Company, and that it could not be made an offense against the anti-trust laws of the State of Texas for said Standard Oil Company to acquire and hold stock in appellant company, as contended in appellant's 59th assignment of error, and the action of this court in not sustaining said assignment of error results in denying to appellant the protection of Sub-division 1, Section 10, Article 1, of the Constitution of the United States, which provides that no state shall pass any law impairing the obligation of contracts, and also that part of the Fourteenth Amendment to said Constitution which provides that no state shall deprive any person of property without due process of law.

34.

This court erred in not holding that the offenses denounced under the Anti-trust Acts of 1899 and 1903 are made separate and distinct offenses for each day, and that each offense should have been made the subject of a separate count in the petition or bill of complaint against appellant, as contended by appellant in its proposition under its 60th assignment of error.

35.

Because this court erred in not holding, as contended by appellant in its proposition under its 60th assignment of error, that since the State in this case has seen fit to prosecute appellant in one count under allegations that appellant had violated the said Anti-trust Acts of 1899 and 1903 on each and every day from May 31st, 1900, down to the time of the trial, the State was entitled to recover but for one day, or, at most, but for one day under each act.

36.

Because this court erred in not holding that the failure of the State to institute this prosecution for a period of seven years, and the imposition upon appellant of the accumulated penalties, was in violation of Section 13, Article 1, of the Constitution of the
1877 State of Texas, which declares that excessive fines shall not be imposed, and in not holding that such delay and the imposition of the accumulated penalties deprives appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, as contended in appellant's 61st assignment of error.

37.

Because this court erred in holding that the penalty which the State was entitled to recover of appellant for violations of the Act

of May 25th, 1899, if any, was not reduced by the Act of March 31st, 1903, to the sum of Fifty Dollars per day, as contended by appellant in its proposition under its 62nd and 63rd assignments of error.

38.

Because this court erred in not holding that Sundays should be excluded in computing the amount which could be assessed against appellant as penalties, as contended in appellant's 64th and 65th assignments of error.

39.

Because this court erred in holding that evidence of the fact that appellant had sold oil at different prices in different parts of the State of Texas in competition with other dealers, not being of itself an offense against the laws of the State, could nevertheless be considered by the jury as evidence in support of the charge that appellant violated the anti-trust laws of the State by entering into combinations with the Standard Oil Company as contended in appellant's 66th, 67th and 68th assignments of error.

40.

Because this court erred in not holding, as contended by appellant in its first proposition under its 69th assignment of error, that there was no evidence showing, or tending to show, that the defendant entered into or became a party to an agreement or understanding with the Standard Oil Company of New Jersey on June 1st, 1900, or at any time between said date and March 31st, 1903, to fix or
1878 regulate the price in Texas of oil refined from petroleum, and that, therefore, such issue should not have been submitted by the court to the jury, as was done in the seventh paragraph of the court's charge quoted in said assignment of error.

41.

Because this court erred in not holding that it was error for the trial court to instruct the jury, as it *idd* in the seventh paragraph of the charge, that they could, in any event, convict the defendant of violating the law for each day embraced between May 31st, 1903, during which it remained or continued to be a party to an agreement or understanding with the Standard Oil Company of New Jersey to fix or regulate the price in Texas of oil refeined from petroleum, as contended by appellant in its second proposition under its 69th assignment of error.

42.

Because this court erred in not holding, as contended by appellant in its first proposition under its 70th assignment of error, that that portion of Section 2 of the Anti-trust Act of March 31st, 1903, wherein a monopoly is defined as, "Where any corporation acquires the shares or certificates of stock or bonds, franchises or other rights or physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening competition, whether such acquisition is accomplished directly or through the instrumentality of trustees, or otherwise", if it defines any offense,

makes the offense an offense by the corporation so acquiring such shares or certificates of stock, and not an offense by the corporation whose shares of stock are so acquired, and that, therefore, it was error for the trial court to instruct the jury, as it did in the 11th paragraph of the charge, to the effect that if they should find from preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31st, 1903, or on any date subsequent thereto and prior to May 29th, 1907, acquired a majority of the capital stock of the defendant corporation, and thereby effected a combination of said two corporations, and if they should further find that such stock was acquired and combination effected, if
1879 any, with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening competition in the sale of oil in Texas, they would convict the defendant.

43.

Because this court erred in holding, as it did in overruling appellant's 70th assignment of error, and its second proposition thereunder, that the acquisition by the Standard Oil Company of New Jersey of a majority of the capital stock of defendant, "with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening competition in the sale of oil in Texas," constituted an offense by defendant without defendant knowing at the time of such purpose and aiding and encouraging such acquisition and purpose.

44.

Because this court erred in not holding that, since it was alleged in the petition that the Standard Oil Company of New Jersey had owned a majority of the stock of defendant since its creation as a corporation on May 29th, 1900, that portion of the 11th paragraph of the trial court's charge to the jury wherein the jury were instructed that the defendant would be guilty of an offense under the Act of March 31st, 1903, if the Standard Oil Company of New Jersey had on March 31st, 1903—acquired a majority of the capital stock of defendant corporation and thereby effected a combination of said two corporations, with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening competition in the sale of oil in Texas, gave said Act of March 31st, 1903, an *ex post facto* operation, in that it made the question of defendant's guilt or innocence depend upon the purpose and intention of the managing officers and directors of the Standard Oil Company of New Jersey in doing an act consummated long prior to the taking effect of said Act of March 31st, 1903, contrary to the provisions of Paragraph 1, Section 10, Article 1, of the Constitution of the United States, and contrary to Section 16, Article 1, of the Constitution of the State of
1880 Texas, and contended by appellant in its third proposition under its 70th assignment of error.

45.

Because this court erred in not holding that it was error for the trial court to refuse to instruct the jury, as requested in special charge No. 10, requested by defendant, to the effect that the defendant was presumed to be innocent until its guilt should be established by competent evidence beyond a reasonable doubt, and that unless they should believe from the evidence beyond a reasonable doubt that the defendant was guilty of some act in violation of the law, as submitted in the instructions of the court, they should return a verdict for the defendant, as contended by appellant in its 71st assignment of error, and proposition thereunder.

46.

Because this court erred in not holding that it was error for the trial court to refuse to give the jury special charge No. 18, requested by defendant and being as follows: "You are instructed that if you believe from the evidence that since the incorporation of defendant under the laws of Missouri on the 29th day of May, 1900, and its obtaining its permit to transact business in the State of Texas on the 31st day of May 1900, the defendant has, through its officers and agents, fixed and regulated the prices at which it has sold oil and other commodities handled by it in the conduct of its business, independently of any control by the Standard Oil Company, then, as to the alleged ground of the fixing and regulating of its selling prices by the Standard Oil Company, you should find for the defendant," as contended by appellant in its 72nd assignment of error and proposition thereunder.

47.

Because this court erred in not holding, as contended by appellant in its 73rd assignment of error, and propositions thereunder, that it was error for the trial court to refuse to give to the jury special charge No. 14 requested by appellant, relating to the right of the Standard Oil Company, as a stockholder in defendant com-
1881 pany, to examine and audit the books, records and accounts of defendant, and with reference to the effect of such stock ownership and such auditing and inspection of defendant's books, records and accounts.

48.

Because this court erred in not holding, as contended by appellant in its 74th assignment of error and proposition thereunder in its 74th assignment of error and proposition thereunder that it was error for the trial court to refuse to give the jury the special instruction No. 23 requested by defendant, relating to the right of the defendant to confine its business operations to any territory desired by it.

* * * * * * *

51.

Because this court erred in not holding, as contended by appellant in its 75th and 76th assignments of error, and propositions there-

under, that the trial court erred in that portion of the eighth paragraph of its charge in regard to the Act of May 25th, 1899, wherein it instructed the jury to find for the plaintiff if they should find from a preponderance of the evidence that on June 1st, 1900, or any date subsequent thereto, and prior to March 31st, 1903, the defendant, acting through its duly appointed and authorized agents, had brought about or permitted any combination or a union of its capital with the capital of the Standard Oil Company of New Jersey, whereby the trade in oil refined from petroleum in Texas was sought to be controlled or limited.

52.

Because this court erred in not holding that the provisions of the Anti-trust Act of May 25th, 1899, and in regard to which the trial court instructed the jury in the eighth paragraph of its charge, and reading "If any two or more persons or corporations who are engaged in buying or selling any article of commerce * * * shall enter into any pool, trust, agreement, combination, confederation, or understanding to control or limit the trade in any such article or thing * * * it shall be in violation of this Act," is of such doubtful construction as to be wholly inoperative, and in fur-
1882 ther holding that to inflict penalties upon this defendant for alleged violations of such provision would be to take the property of this defendant without due process of law, contrary to the provisions of the first Section of the Fourteenth Amendment to the Constitution of the United States, as contended by appellant in its first and second propositions under its 75th and 76 assignments of error.

53.

Because this court erred in not holding, as contended by appellant in its third proposition under its 75th and 76 assignments of error, that the Anti-trust Act of May 25th, 1899, made agreements, combinations or understandings between two or more persons or corporations to control or limit the trade in an article of commerce, unlawful, if at all, only when entered into between two or more persons or corporations engaged in buying or selling such article of commerce in this State, and in not further holding, as contended by appellant in its fourth proposition under said assignment of error, that, since it was admitted on the trial that the Standard Oil Company of New Jersey had never transacted any business in Texas, an agreement, combination or understanding between said Standard Oil Company of New Jersey and defendant to control or limit the trade in oil could not, if made, have constituted a violation of said Act of May 25th, 1899, and that the trial court erred in so instructing the jury.

54.

Because this court erred in not holding, as contended by appellant in its fifth proposition under its 75th and 76th assignments of error, that the trial court erred in instructing the jury, as it did in the eighth paragraph of the charge, that a combination or union of the

capital of defendant with the capital of the Standard Oil Company of New Jersey whereby the trade in oil in Texas was sought to be controlled or limited, constituted an offense, in that said instruction assumed as a fact that the Standard Oil Company of New Jersey was engaged in buying or selling oil in Texas from June 1st, 1900, up to March 31st, 1903, contrary to the express admissions of the
1883 parties to this suit made upon the trial of this cause.

55.

Because this court erred in holding that it was not error for the trial court to instruct the jury, as it did in the eighth paragraph of its charge, that it could convict the defendant of violating the law for each day embraced between May 31st, 1900, and March 31st, 1903, during which it remained or continued to be a party to an agreement or understanding with the Standard Oil Company of New Jersey to fix or regulate the price in Texas of oil refined from petroleum, which error is presented in appellant's 75th assignment of error, and its sixth proposition thereunder.

56.

Because this court erred in not holding, as contended by appellant in its 77th and 78th assignments of error, and its first and second propositions thereunder, that that portion of the Anti-trust Act of May 25th, 1899, defining a monopoly, is of such doubtful and uncertain meaning as to be wholly inoperative, and that to convict defendant of a violation of said provisions would be to take the property of this defendant without due process of law, in contravention of the 1st Section of the Fourteenth Amendment to the Constitution of the United States, and that, therefore, it was error for the trial court to submit to the jury, as it did in the eighth paragraph of its charge, the question as to whether or not the defendant was a party to a monopoly, as defined in said provision of said Act.

57.

Because this court erred in not holding, as contended by appellant in its third proposition under its 77th and 78th assignments of error, that that portion of said Anti-trust Act of May 25th, 1899, whereby a monopoly is defined as "Any union, combination or consolidation of capital * * * between persons, firms or associations of persons, or corporations, * * * *whereby the several results described herein are reasonably calculated to be produced,*" is too indefinite to define any offense, and that to convict defendant of an offense under said provisions would be to take the property of
1884 this defendant without due process of law and contrary to the Fourteenth Amendment to the Constitution of the United States, and that, therefore, the trial court erred in instructing the jury, as it did in the eighth paragraph of its charge, that they would convict the defendant if they found from the evidence that on June 1st, 1900, or any date subsequent thereto, and prior to March 31st, 1903, the defendant * * * had brought about or permitted any combination or union of its capital with the capital of the

Standard Oil Company of New Jersey whereby the price of oil * * * *would be reasonably calculated to be fixed or regulated.*

58.

Because this court erred in not holding, as contended by appellant in its 79th and 80th assignments of error, and propositions thereunder, that the trial court erred in instructing the jury, in relation to the Act of March 31st, 1903, as it did in the ninth paragraph of its charge, that a combination of the capital of defendant, entered into by defendant's duly authorized agent, with the capital of the Standard Oil Company of New Jersey *for the purpose of creating in Texas or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit in this State of the business of selling oil* would constitute an offense.

59.

Because this court erred in not holding, as contended by appellant in its first and second propositions under its 79th and 80th assignments of error, that that portion of the Anti-trust Act of March 31st, 1903, which defines a trust as "A combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons to create, or which may tend to create or carry out, restrictions in trade or commerce * * * or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this State," is too vague and uncertain to define any offense, and that to convict this defendant of violating said provision would be to take its property without due process of law, contrary to the provisions of the 1st Section of the Fourteenth Amendment to the Constitution of the United States.

60.

Because this court erred in not holding, as contended by ap-
1885 pellant in its third proposition under its 79th and 80th assignments of error, that the trial court erred in instructing the jury, as it did in the ninth paragraph of the charge, to convict the defendant if they found from the evidence "that the defendant * * * entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, *to* carry out in Texas, *restrictions in the free* pursuit in this State of the business of selling oil refined from petroleum * * * and that defendant remained or was a party to such combination * * * on March 31st, 1903, or on any date subsequent thereto and prior to April 29th, 1907," for the reason that it gave the jury no instruction as to what facts would constitute "restrictions in the free pursuit in this State of the business of selling oil refined from petroleum," and left the jury to determine as a matter of law what facts would constitute such restrictions.

61.

Because this court erred in not holding, as contended by appellant in its fourth proposition under its 79th and 80th assignments of

error, that the trial court erred in instructing the jury, as it did in the ninth paragraph of the charge, that they would convict the defendant, if they found from the evidence that the "direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31st 1903, or on any date subsequent thereto and prior to April 29th, 1907, and that they were placed under such common management or control, if any, by their respectively authorized officers under such circumstances that such common management or control * * * created or tended to create or carry out restrictions in the sale in Texas of oil * * * ," in that said charge gave the jury no instruction as to what was meant by the term "restrictions in the sale in Texas of oil," and gave the jury no instructions as to what facts would constitute such restrictions, and left the jury to determine for themselves as a matter of law what facts would constitute such restrictions.

62.

Because this court erred in not holding, as contended by ap-
1886 pellant in its fifth proposition under its 79th and 80th assignments of error, that it was error for the trial court to instruct the jury, as it did in the ninth paragraph of the charge, to convict the defendant if it entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit in this State of the business of selling oil refeined from petroleum in that by such instructions the court ignored the statutory requisite that the business refered to should be a business authorized or permitted by the laws of the State of Texas, since the uncontradicted evidence established and it was admitted on the trial that the Standard Oil Company of New Jersey had never applied for or obtained a permit to do business in Texas.

63.

Because this court erred in not holding, as contended by appellant in its 81st and 82nd assignments of error, and propositions thereunder, that the trial court erred in instructing the jury, as it did in the tenth paragraph of its charge, relating to the Act of March 31st, 1903, to the effect that they would convict the defendant if they should find from the evidence that the direction of the affairs of the defendant and the Standard Oil Company of New Jersey were under the same management or control * * * and that they were placed under such common management or control * * * under such circumstances that such common management or control * * * *created, or tended to create, or carry out restrictions in the sale in Texas of oil.*

64.

Because this court erred in not holding, as contended by appellant in its third proposition under its 81st and 82nd assignments of error, that the trial court erred in instructing the jury, as it did in the tenth

paragraph of the charge, as set forth in the immediately preceding grounds for rehearing, in that the court in said portion of the charge omitted to instruct the jury that in order to constitute the offense thereby sought to be defined, it was necessary that there should
1887 be a "combination or consolidation" of the two or more corporations in order to constitute a monopoly under Section 2 of the Anti-trust Act of March 31st, 1903.

65.

Because this court erred in not holding that the trial court erred in admitting in evidence over the objections of defendant the certified copy of the articles of incorporation of the Standard Oil Company of Ohio, as contended by appellant in its 84th assignment of error, and proposition thereunder.

67.

Because this court erred in not holding, as contended by appellant in its 86th assignment of error, and proposition thereunder, that the trial court erred in admitting in evidence the copy of the Standard Oil Trust Agreement copied in plaintiff's petition, over the objections of defendant made to the admission thereof on the ground that the same was immaterial and irrelevant to any issue in the case, and was made prior to the passage of any anti-trust laws of this State, and on the further ground that defendant was not a party to said trust agreement.

68.

Because this court erred in not holding, as contended by appellant in its 88th assignment of error, and proposition thereunder, that the trial court erred in admitting in evidence that portion of the answer of the witness Ida M. Butts to the seventh interrogatory propounded to her by plaintiff, to the effect that while George Rice held certificates in the Standard Oil Trust a suit was brought by the Attorney General of the State of Ohio "to force the Standard Oil Company out of the Standard Oil Trust or cause it to cease doing business in the State of Ohio if it remained in the Trust, and that the decision of the Supreme Court of Ohio was in favor of the state," and which evidence was admitted by the court over the objections of defendant thereto made on the ground that the same was not the best evidence of said facts, and that it was not competent for the witness to
1888 state her conclusion as to the effect of the decision referred to of the Supreme Court of the State of Ohio, and on — further ground that said answer appeared to be hearsay, and on the further ground that said answer appeared to be but a conclusion of the witness.

69.

Because this court erred in not holding, as contended by appellant in its 89th assignment of error, that the trial court erred in admitting in evidence that portion of the answer of the witness Ida M. Butts to the seventh interrogatory propounded to her, to the effect that after the decision of the Supreme Court of Ohio in the suit brought by the

Attorney General of that state, the Standard Oil Trust "pretended to go out of existence; and to this effect caused an order to be issued to all certificate holders, including George Rice, to exchange their trust certificates into certificates called assignments of legal title," over the objections of defendant made on the ground that said evidence appeared to be hearsay.

70.

Because this court erred in not holding, as contended by appellant in its ninetieth assignment of error, and propositions thereunder, that the trial court erred in admitting in evidence, over the objections of defendant, the answer of the witness, Ida M. Butts, to the seventh interrogatory propounded to her, to the effect that, after the decision of the suit brought by the Attorney General of Ohio the capital stock of the Standard Oil Company of New Jersey was increased and said Company made, to all intents and purposes, the same in effect as the Standard Oil Trust, and that they made it the holding company for all the companies of the Standard Oil Trust.

71.

Because this court erred in not holding, as contended by appellant in its 91st assignment of error, and proposition thereunder, that the trial court erred in admitting in evidence that portion of the answer of the witness Ida M. Butts wherein she referring to the Standard Oil Trust, testified "the Trust is not dissolved and could not be dissolved until all Trust certificates were surrendered.

72.

Because this court erred in not holding, as contended by
1889 appellant in its 96th assignment of error, and proposition thereunder, that the trial court erred in permitting the witness C. W. Cahoon, who was sworn as witness for the plaintiff, and testified to having been in the employ of defendant as its agent at Dallas for several years prior to the trial, and that the brand of oil as P. W. and S. W. oils were inferior grades to that known as Eupion oil, to testify over the objections of defendant, that for a period of about sixty days during the first part of the year 1906 defendant sold P. W. and S. W. oils as Eupion oil—the objection made by defendant to the admission of such evidence being that such fact did not constitute a violation of the law, and could only be used for the purpose of an inflammatory argument.

74.

Because this court erred in not holding, as contended by appellant in its 92nd assignment of error, and proposition thereunder, that the trial court erred in admitting in evidence, over the objections of defendant, that portion of the answer of the witness Ida M. Butts to the tenth interrogatory in which, after detailing, the corporations and persons originally entering into the Standard Oil Trust, she testified "that others were added until in the early part of 1906 there were twenty companies in the great grand division of the Trust," and naming the companies.

75.

Because this court erred in not holding, as contended by appellant in its 93rd assignment of error, and proposition thereunder, that the trial court erred in admitting in evidence, over the objections of defendant, that portion of the answer of the witness Ida M. Butts to the fourteenth interrogatory, wherein, in answer to the following question, "After the judgment of the Supreme Court of Ohio state what difference, if any, was made with reference to the conduct and control of the companies which had been in the Trust by the trustees of the Standard Oil Trust, and state what is the present method of controlling and managing the companies that went into the Trust?" she testified: "They made little or no change until contempt proceedings were brought in 1897, when they transferred more trust certificates into assignments of legal title certificates, and soon 1890 thereafter closed as many of — as possible into stock in the Standard Oil Company of New Jersey, which is the present method of controlling and managing the companies now in the Trust, the Standard Oil Company of New Jersey being able to hold stock of the other companies of the Trust, became the holding Company," and in not further holding that the witness was not shown to have had any personal knowledge of the matters testified to by her in said answer, and that said answer was but a conclusion of the witness.

76.

Because this court erred in not holding, as contended by appellant in its 94th assignment of error, and proposition thereunder, that the trial court erred in admitting in evidence, over the objections of the defendant, the third, fourth, fifth, sixth, seventh and eighth paragraphs of the agreement between plaintiff and defendant, being Stipulation No. 1, as shown on pages 43 to 46 of the stenographer's report.

77.

Because this court erred, in not holding, as contended by appellant in its 97th assignment of error, and propositions thereunder, that the trial court erred in admitting in evidence, over the objections of defendant, and for the purpose for which the same was stated to be offered by plaintiff, to-wit, that the witness Wade Hampton, at the time that his deposition was taken, attempted to conceal the fact that the Standard Oil Company of New Jersey audited the books of the Waters Pierce Oil Company through auditors sent by said witness, Wade Hampton, to the office of defendant for that purpose, wherein the witness, in answer to the following question "Please state whether or not the books and accounts of the Waters Pierce Oil Company of Missouri have ever been audited by you, or under your direction," the said witness answered, "Not the present organization."

78.

Because this court erred in not holding, as contended by appellant in its 98th assignment of error, and proposition thereunder, in permitting the witness, Royer Campbell, to testify, over the objections

of defendant, that in the year 1894 when he quit buying oil
1891 from the original Waters Pierce Oil Company in San Antonio, Texas, and bought from other parties to supply his trade in San Antonio, said Waters Pierce Oil Company immediately cut the price of oil from 16¢ or 17¢ to 8¢ and 10¢ per gallon, as shown on pages 470-473 of the stenographer's report.

79.

Because this court erred in not holding, as contended by appellant in its 99th assignment of error, and proposition thereunder, that the trial court erred in permitting the witness, Royer Campbell, to testify, over the objections of defendant, as to the character of warfare and competition that the old Waters Pierce Oil Company carried on with him during the year 1894 at San Antonio, as shown on pages 472-475 of the stenographer's report.

80.

Because this court erred in not holding, as contended by appellant in its 100th assignment of error, that the trial court erred in permitting the witness, A. W. Clem, to testify over the objections of defendant, with reference to the old Waters Pierce Oil Company cutting prices of oil at Seymour and other places in Texas during the year 1891, as shown on pages 545-547 of the stenographer's report.

81.

Because this court erred in not holding, as contended by appellant in its 101st assignment of error, that the trial court erred in permitting the witness, A. W. Clem, to testify, over the objections of defendant, that the old Waters Pierce Oil Company in the year 1894, after it had bought out the business of the said A. W. Clem at Dallas, Texas, advanced its selling price of oil from 9½¢ per gallon to 22¢ per gallon, and in not holding that said evidence was irrelevant to any issue in the case and calculated to prejudice the jury against the defendant.

82.

Because this court erred in not holding, as contended by appellant in its 102nd as-ignment of error, that the trial court erred in permitting the witness, A. W. Clem, to testify, over the objections of defendant, that in the year 1904 he wrote the Security Oil
1892 Company for prices on naptha and lubricating oil, and that the prices quoted him by said Company were about 2¢ above the market price, and that in the year 1906 he wrote said Security Oil Company for prices on naptha, and that said Company quoted him about the market price he was selling at in Dallas, as shown on pages 581-583 of the stenographer's report.

83.

Because this court erred in not holding that the trial court erred, as contended by appellant in its 103rd assignment of error, in permitting the witness, C. W. Cahoon, who was shown to be one of defendant's general agents in Texas, to testify, over the objections of defendant, that at some points in Texas where there was no competi-

tion defendant's prices at which it sold oil were higher than at points where there was competition, as shown on pages 650-651 of the stenographer's report, and in not further holding, as contended by appellant in its said assignment of error, and proposition thereunder, that the admission of said evidence was prejudicial to defendant in that it was calculated to prejudice the jury against defendant.

84.

Because this court erred in holding that there was any evidence adduced upon the trial sufficient to show that the defendant had, at any time, since June 1st, 1900, committed any act or did anything in violation of the Anti-Trust Laws of the State of Texas, and in not holding that the trial court erred, as contended by appellant in its 104th assignment of error, *that the trial court erred* in refusing to grant the defendant a new trial upon the ground that the verdict of the jury was not supported by the evidence, and that the evidence wholly failed to show any violation by defendant of such anti-trust laws.

85.

Because this court erred in holding that the action of the jury in assessing penalties against the defendant at the sum of $1,549,500.00 for alleged violations of law between May 31st, 1900 and March 31st, 1903, was not so grossly and shockingly excessive as to show passion and prejudice on the part of the jury against the defendant, and in not holding, as contended by appellant in its 109th as-
1893 signment of error, and proposition thereunder, that the trial court erred in refusing to grant the defendant a new trial upon the ground, set up in its motion for a new trial, that the verdict was, in the respect above stated, so grossly and shockingly excessive as to show passion and prejudice on the part of the jury against the defendant.

86.

Because this court erred in not holding, as contended by appellant in its 110th assignment of error, that the trial court erred in not granting the defendant a new trial upon the ground, set up in its motion for a new trial, that the verdict of the jury in assessing penalties against defendant for alleged violation of the law between May 31st, 1900, and March, 1903, at the sum of $1,549,500.00 was so manifestly excessive as to amount to depriving defendant of its property without due process of law, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

87.

Because this court erred in not holding, as contended by appellant in its 111th assignment of error, that the trial court erred in refusing to grant the defendant a new trial upon the ground, set up in its motion for a new trial, that the verdict of the jury in assessing penalties against the defendant for alleged violations of the anti-trust acts of May 25th, 1899, at the sum of $1,549,500.00, and in assessing penalties against the defendant for alleged violations of the Anti-trust Act of March 31st, 1903, at the sum of $74,400.00, is so manifestly

excessive as to amount to the deprivation of its property, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

88.

Because this court erred in holding that the verdict of the jury in assessing penalties against the defendant for the alleged violations of the Anti-trust Act of May 25th, 1899, at $1,549,500.00 was not so manifestly excessive as to amount to the imposition of excessive fines, in violation of Section 13, Article 1, of the Constitution
1894 of the State of Texas, and in not holding, as contended by appellant in its 112th assignment of error, that the verdict of the jury, in the respect above stated, amounted to the imposition of excessive fines within the meaning of said Article of the Constitution.

89.

Because this court erred in not holding, as contended by appellant in its 113th assignment of error, that the trial court erred in refusing to grant defendant a new trial upon the ground, set up in its motion for a new trial, that the verdict of the jury in assessing penalties against defendant for the alleged violations of the Anti-trust Act of May 25th, 1899, at $1,549,500.00, and in assessing penalties against the defendant for alleged violations of the Anti-trust Act of March 31st, 1903, was so manifestly excessive as to amount to the imposition upon defendant of excessive fines in violation of Section 13, Article 1, of the Constitution of the State of Texas.

90.

Because this court erred in not holding, as contended by appellant in its 114th assignment of error, that the trial court erred in refusing to grant the defendant a new trial upon the ground set forth in said motion for a new trial, that the verdict of the jury in so far as it assesses penalties against the defendant on each of the issues submitted to the jury for each of the days between May 31st, 1900, and March 31st, 1903, is unsupported by the evidence, in that there was no evidence showing that the defendant if it violated the law in any of the respects complained of between May 31st, 1900, and March 31st, 1903, committed such violation on any particular day, nor was there any evidence showing that the defendant, if it violated the law in any of the respects complained of between May 31st, 1900, and March 31st, 1903, committed such violation for either 1033 days, or any other definite number of days.

91.

Because this court erred in not holding, as contended by appellant in its 115th assignment of error, that the trial court erred in refusing to grant defendant a new trial upon the ground, set forth in
1895 its motion for a new trial, that the verdict of the jury, in so far as it finds for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1st, 1903, and April 29th, 1907, being 1488 days, is unsupported by the evidence, in that there was no evidence showing that the defendant, if it violated the law in any of the respects complained of between said

days, committed such violations on any particular day, nor was there any evidence showing that the defendant violated the law in any of the respects complained of between said days on 1488 days, or any other definite number of days.

92.

Because this court erred in not sustaining Appellant's motion to consolidate with this proceeding all matters connected with the appointment of Robert J. Eckhardt as Receiver of Appellant's property embraced in the separate transcript docketed as a separate appeal in this Court, since the same matters are embraced in the transcript of the record in this cause and presented in Appellant's brief herein; which motion to consolidate was filed by Appellant in this Court on the first day of this term on October 7th, 1907, and particularly since both transcripts were filed in this Court on the same day and this cause was first docketed in this Court.

93.

Because this Court erred in not considering and sustaining Appellant's assignment of error No. 116 and in not holding the motion or application for the appointment of a receiver to be insufficient to confer jurisdiction on the trial court to appoint a receiver.

94.

Because this court erred in not considering and sustaining Appellant's assignment of error No. 117.

95.

Because this Court erred in not considering and sustaining Appellant's assignment of error No. 118.

96.

Because this Court erred in not considering and sustaining Appellant's first proposition under its assignment of error No. 120,
1896 and in not holding that when Appellant gave its supersedeas bond in connection with its appeal from the main judgment of June 1st, 1907, on June 15th, 1907, that the legal effect of such bond was to vacate and set aside the order appointing a receiver.

97.

Because this Court erred in not considering and sustaining Appellant's second proposition under its assignment of error No. 120, and in not holding that to deny to appellant the effect of its said supersedeas bond as contended in its said first proposition, results in depriving Appellant of its property without due process of law, and a denial to it of the equal protection of the law, in violation of section one of the 14th Amendment to the Constitution of the United States. This error is also presented in Appellant's assignment of error No. 121.

98.

Because this Court erred in not considering and sustaining Appel-

lant's assignment of error No. 122, and in not holding that the Act of the Legislature of the State of Texas, approved April 11th, 1907, was unconstitutional and in violation of section one of the 14th Amendment to the Constitution of the United States, because of the arbitrary power therein conferred.

99.

Because this Court erred in not considering and sustaining Appellant's assignment of error No. 123, and in not holding said Act of April 11th, 1907 to be in violation of Section 16 of Article One of the Constitution of the State of Texas.

100.

Because this Court erred in not considering and sustaining Appellant's first proposition under its assignment of error No. 124, and in not holding said Act of April 11th, 1907, to be in violation of Section 10 of Article One of the Constitution of the United States, because by creating a lien on Appellant's property for offenses committed before said Act took effect the penalty for such offenses was thereby increased.

1897

101.

Because this Court erred in not considering and sustaining Appellant's second proposition under its assignment of error No. 125 and in not holding said Act of April 11th, 1907, to be in violation of section one of the 14th Amendment to the Constitution of the United States, because by the provisions of said Act the creation of liens and the right to appoint receivers is limited to suits against corporations, when as against individuals for the same offense and otherwise similarly situated, no lien is created and no right to appoint a receiver exists.

102.

Because this Court erred in not considering and sustaining Appellant's first proposition under its assignment of error No. 126.

103.

Because this Court erred in not considering and sustaining Appellant's second proposition under its assignment of error No. 126.

104.

Because this Court erred in not considering and sustaining Appellant's assignment of error No. 127, and in not holding that the action of the trial court in appointing a receiver of appellant's property as a means of preventing it from the further or continued violation of the laws, results in depriving Appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States. This error is presented in Appellant's first proposition under said assignment.

105.

Because this Court erred in not considering and sustaining Appellant's second proposition under its assignment of error No. 127.

106.

Because this Court erred in not considering and sustaining Appellant's assignment of error No. 128, and in not holding that the trial court erred in appointing a receiver of appellant's property without evidence being introduced to show that Appellant could not make use of its property in conformity with law. This error of the
1898 trial court thus permitted to stand by this court results in depriving Appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

107.

Because this Court erred in not considering and sustaining Appellant's assignment of error No. 129, and in not holding the said Act of April 11th, 1907, to be in violation of Section 10, Article 1, of the Constitution of the United States, because by providing that a receiver may be appointed for the property of a corporation in a suit involving the violation of the anti-trust laws of the State, this Act as applied and construed by the trial court as authorizing the appointment of a receiver of appellant's property in this case, is an *ex post facto* law and void under Section 10, Article 1, of the Constitution of the United States.

Wherefore, and upon each of the foregoing grounds of error committed by this court, appellant moves the court to grant it a rehearing herein, and to set aside and vacate its said judgment affirming the judgment of the District Court of Travis County herein complained of.

Appellant represents that the Honorable R. V. Davidson, who is the Attorney General of the State of Texas, and Jewell P. Lightfoot, an Assistant Attorney General of said State and John W. Brady, County Attorney of Travis County, and T. W. Gregory and R. L. Batts composing the firm of Gregory & Batts, and George W. Allen and W. D. Hart, composing the firm of Allen & Hart, are the attorneys of record for the appellee, the State of Texas, upon whom service of this motion may be made, and that each of said attorneys resides and may be found in said Travis County, Texas, and service of this motion is prayed to be made upon the said attorneys, as required by law.

Respectfully submitted,

N. A. STEDMAN,
COCHRAN & PENN,
Attorneys for Appellant.

1900 (Endorsements on back of Motion for rehearing:) Motion 2872. With App. No. 5744. Waters Pierce Oil Company *vs.* The State of Texas. Motion for Rehearing. Overruled.

Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Dec. 24, 1907. R. H. Connerly, Clerk. Filed in Supreme Court Feb. 13 1908. F. T. Connerly, Clerk.

Errata.—There is no page 1899. Same was accidentally skipped.

R. H. CONNERLY, *Clerk.*

1901 *Order Made January 15th, 1908, Overruling Motion for Rehearing.*

Motion 2872. #4212.

WATERS PIERCE OIL COMPANY
vs.
THE STATE OF TEXAS.

Appeal from Travis County.

Motion for a rehearing; the motion is overruled.

1902 *Order of Supreme Court of Texas Refusing Application for Writ of Error.*

FEBRUARY 26, 1908.

App. No. 5744.

WATERS-PIERCE OIL CO.
vs.
THE STATE OF TEXAS.

From Travis County, Third District.

This day came on to be heard the application of Waters-Pierce Oil Co. for a Writ of Error to the Court of Civil Appeals for the 3rd District, and the same having been duly considered, it is ordered that said application be refused; That the Applicant, The Waters-Pierce Oil Company, a corporation, and its sureties, The American Surety Company of New York, and John H. Kirby, pay all costs incurred on this Application.

(Endorsed:) Application No. 5744. Waters Pierce Oil Co. *vs.* The State of Texas. Copy of Judgment in Supreme Court. Application for writ of error. Refused. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin Texas, Mar. 26, 1908. R. H. Connerly, Clerk.

1903 *Bill of Costs, Supreme Court of Texas.*

CLERK'S OFFICE, SUPREME COURT.

No. 5744.

WATERS PIERCE OIL COMPANY
vs.
THE STATE OF TEXAS.

Certified Copy Bill of Costs, Supreme Court.

Filing Application	.50
Docketing Petition	.50
Entering appearance of counsel	.50
Filing two briefs	.50
Filing three papers	.90
Entering orders	1.00
Entering judgment on application	1.00
Certified copy of judgment	1.00
Taxing costs of application	.50
Certified copy bill of costs	1.00
Filing and entering motion	.55
Total	$8.05

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above copy of the original bill of costs is true and correct. Witness my hand and seal of said court, at Austin, this the 26th day of March, 1908.

F. T. CONNERLY, *Clerk.*

(Endorsed:) Application No. 5744. Certified Copy bill of costs in Supreme Court, Austin. Waters Pierce Oil Co. *vs.* State of Texas. $8.05. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Mar. 26, 1908. R. H. Connerly, Clerk.

1904 In the Supreme Court of the United States.

Between

THE WATERS PIERCE OIL COMPANY (Defendant), Plaintiff in Error,
and
THE STATE OF TEXAS (Plaintiff), Defendant in Error.

Assignment of Errors.

The defendant the said Waters Pierce Oil Company says that in the record and proceedings aforesaid and in giving and affirming the judgment aforesaid of the District Court and in the order

appointing a receiver as a consequence of the said judgment there is manifest error in this to-wit

1. That it was decided in and by the said judgment that the defendant the Waters Pierce Oil Company which was incorporated under the laws of Missouri on the 29th May 1900 and not before was liable to the penalties imposed by the statute of 1903 in the record mentioned for and on account of the acts of the Standard Oil Company in acquiring a majority of the shares of the Waters-Pierce Oil Company before the said statute of 1903 was passed or took effect which acts were not done in the state of Texas. And by means thereof the defendant the Waters-Pierce Oil Company is thereby deprived of its property without due process of law. And it was also thereby decided that the said statute of 1903 was valid and not repugnant to the Constitution of the United States whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provision of the said Constitution forbidding the passage of any *ex post facto* law by any state.

2. There is also manifest error in this that it was decided in and by the said judgment that the said Waters Pierce Oil Company was liable to the penalties imposed by the statute of 1899 in the record mentioned for and on account of a supposed union or
1905 combination of its capital with the capital of the Standard Oil Company by means of acts done by the said Standard Oil Company long before the passage of the said statute and long before the incorporation of the said Waters Pierce Oil Company in acquiring a majority of the shares of another then existing company (hereinafter called the old Waters Pierce Oil Company) incorporated under the laws of Missouri by the same name as the said Waters Pierce Oil Company which acts were not done in the state of Texas. And by means thereof the defendant the Waters Pierce Oil Company is deprived of its property without due process of law. And it was also thereby decided that the said statute was valid and not repugnant to the said Constitution whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provision of the said Constitution forbidding the passage of any *ex post facto* law by any state.

3. There is also manifest error in this that it was decided in and by the said judgment that the defendant the Waters Pierce Oil Company was liable to the penalties imposed by the said statutes of 1899 and 1903 respectively for and on account of certain supposed agreements or understandings entered into before the passage of either of the said statutes between the Standard Oil Company and the old Waters Pierce Oil Company whose property and business the defendant the Waters Pierce Oil Company afterwards acquired without becoming in any way bound by or answerable in respect of any of the said supposed agreements or understandings and never became so bound or answerable or did any act in carrying any of them into effect which supposed agreements or understandings if they existed were entered into out of the state of Texas. And by means of the said decision the said Waters Pierce Oil Company is

deprived of its property without due process of law contrary to the provisions of the said Constitution.

1906 4. There is also manifest error in this that the Court upon hearing the exceptions of the defendant to the plaintiff's amended original petition before the said trial overruled among others of them the exception (No. 9) whereby the defendant excepted to all parts and paragraphs of the said petition by which it was sought to hold the defendant subject to the provisions of the said statute of 1903 and to cancel its permit to do business in Texas and to recover penalties against it on account of the alleged holding or ownership by the Standard Oil Company of New Jersey of a majority of its stock because according to the allegations in the said petition the said stock was so held and owned by the said Standard Oil Company at and long prior to the passage of the said statute of 1903 and its ownership of the said stock being a vested right and not in violation of the laws of the state of Texas when the defendant's permit to transact business in Texas was granted to it on May 31st, 1900, it was not competent or within the constitutional power of the legislature of the state of Texas to interfere with such ownership or divest the said Standard Oil Company of its said property or to make it an offence by the defendant subjecting it to penalties and to a forfeiture of its said permit for such vested ownership to continue and that the said statute of 1903 is violative of the Constitution of the United States for that it is both *ex post facto* and retroactive in its operation and for the additional reason that if given the effect of prohibiting the continuance of such ownership of the said stock by the said Standard Oil Company and of making it an offence on the part of the defendant for such holding to continue it would deprive the defendant of its property without due process of law and deny to the defendant the equal protection of the laws and impair the obligations of a contract contrary to the provisions of the said Constitution in the said exception referred to and for these reasons the defendant therein said that it was apparent that all allegations in the said petition with respect to the alleged ownership of the defendant's stock by the

1907 Standard Oil Company should be stricken out and of this special exception the defendant prayed the judgment of the court. And the said exception being overruled the defendant was by the said judgment made liable to the penalties imposed by the said statute of 1903 for and on account of the acts of the Standard Oil Company in acquiring the said majority of the stock of the defendant before the passage of the said statute of 1903 and continuing afterwards to hold the same. And the defendant has thereby been denied the equal protection of the laws and is deprived of its property without due process of law. And it was also thereby decided that the said statute of 1903 was valid and not repugnant to the Constitution of the United States whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provision of the said Constitution forbidding the passage of any *ex post facto* law by any state.

5. There is also manifest error in this that the Court in like manner also overruled another of the said exceptions No. 20 to the said

petition whereby if the Court should construe the plaintiff's petition as alleging that the defendant was the same corporation—the same entity as the old Waters Pierce Company (which the said petition does plainly allege) then the defendant excepted to all the allegations in the said petition whereby it was sought to recover penalties of the defendant under the provision of the said statute of 1899 on account of the alleged ownership by the said Standard Oil Company of the stock of the defendant or on account of the alleged agreement between the defendant and the said Standard Oil Company or on account of the alleged agreement between the defendant and the said Standard Oil Company and the other corporations and persons mentioned in the said petition and said that the same were insufficient for the
1908 reason that if the petition be so construed it then affirmatively appeared from the said petition that the said alleged ownership of the stock of the defendant by the said Standard Oil Company existed at the time of and prior to the taking effect of the said statute of 1899 and that all of the said alleged agreements and understandings were made and entered into prior to the passage of the said statute and for the reason that the said statute was intended to act prospectively only and if intended to apply to ownerships by one corporation of the stock of another corporation or to apply to agreements of the character of the said alleged agreements so set forth in the said petition it was only intended to apply to such ownerships of stock as should be acquired after the taking effect of the said statute and to such agreements as should be made or entered into after the taking effect of the said statute and if the said statute should be construed as having been intended by the legislature to authorize the recovery against the defendant of the penalties provided for in the said statute on account of the continuation of the said alleged ownership of its stock by the said Standard Oil Company or on account of the performance by this defendant of any of the alleged agreements so alleged to have been made prior to the taking effect of the said statute then such act so construed would be violative of the said Constitution in that it would be retroactive in its effect and impair the obligations of contracts any deny to the defendant the equal protection of the laws and would take the property of the defendant without due process of law and of this the defendant prayed judgment of the Court. And the said exception being overruled the defendant was by the said judgment made liable to the penalties imposed by the said statute of 1899 for and on account of the acts of the Standard Oil Company in acquiring the said stock of the old Waters Pierce Oil Company before the passage of the said statute of 1899 and continuing afterwards to hold the same and taking a corresponding majority of the shares or the beneficial interest in such
1909 majority of the shares of the defendant the Waters Pierce Oil Company issued to the said Standard Oil Company for its interest in the old Waters Pierce Oil Company in which acts of the said Standard Oil Company the defendant had no part and for and on account of the alleged agreements and understandings between the old Waters Pierce Oil Company and the said Standard Oil Company and the said other corporations and persons entered into

before the passage of the said statute of 1899 to none of which agreements or understandings the defendant ever became a party or became in any way answerable therefor. And the defendant is thereby denied the equal protection of the laws and is deprived of its property without due process of law.

6. There is also manifest error in this that the Court in like manner also overruled another of the said exceptions (No. 21) to the said petition whereby the defendant excepted to all the allegations in the said petition whereby it was sought to recover penalties of the defendant under the provisions of the said statute of 1903 on account of the alleged ownership by the said Standard Oil Company of the stock of the defendant or on account of the alleged agreements between the defendant and the said Standard Oil Company or on account of the alleged agreements between the defendant and the said Standard Oil Company and the other corporations and persons mentioned in the said petition and said that the same were insufficient for the reason that it affirmatively appeared from the said petition that the alleged ownershop of the stock of the defendant by the said Standard Oil Company existed at the time of and prior to the passage of the said statute of 1903 and that all of the alleged agreements and understandings were made and entered into prior to the passage of the said statute and for the reason that the said statute was intended to act prospectively only and if intended to apply to ownerships by one corporation of the stock of another corporation or to apply to agreements of the character set forth in the said petition it

1910 was only intended to apply to such ownerships of stock as should be acquired after the taking effect of the said statute and to such agreements as should be made or entered into after the taking effect of the said statute and if the said statute should be construed as having been intended by the legislature to authorize the recovery against the defendant of the penalties provided for in the said statute on account of the continuance of the said alleged ownership of the stock by the said Standard Oil Company or on account of the performance by the defendant of any of the agreements so alleged to have been made prior to the taking effect of the said statute such statute so construed would be violative of the said constitution in that it would be retroactive in its effect and impair the obligations of contracts and deny to the defendant the equal protection of the laws and would take the property of the defendant without due process of law and of this the defendant prayed judgment of the Court. And the said exception being overruled the defendant was by the said judgment made liable to the penalties imposed by the said statute of 1903 for and on account of the acts of the Standard Oil Company in acquiring the said stock of the old Waters Pierce Oil Company before the passage of the said statute of 1903 and continuing afterwards to hold the same and taking a corresponding majority of the shares or the beneficial interest in such majority of the shares of the defendant the Waters Pierce Oil Company issued to the said Standard Oil Company for its interest in the old Waters Pierce Oil Company in which acts of the said Standard Oil Company the defendant had no part and for and on account of

the alleged agreements and understandings between the old Waters Pierce Oil Company and the said Standard Oil Company and the said other corporations and persons entered into before the passage of the said statute of 1903 to none of which agreements or understandings the defendant ever became a party or became in any way answerable therefor. And the defendant is thereby denied the equal protection of the laws and is deprived of its property without due process of law.

1911 7. There is also manifest error in this that the Court in like manner overruled another of the said exceptions (No. 25) to the said petition whereby the defendant objected that each of the said statutes of 1899 and 1903 was so indefinite vague and uncertain in its terms that it could not be ascertained by the language used that particular acts constituted an offence subjecting the offender to punishment as therein prescribed and for that reason a person could not know in advance of committing the act whether he was violating the law and that to subject the defendant to heavy penalties for an alleged violation thereof would result in the taking of the defendant's property without due process of law contrary to the provisions of the said Constitution. And the said exception being overruled the defendant is by the said judgment made liable to the penalties imposed by the said statutes of 1899 and 1903 respectively and is thereby deprived of its property without due process of law accordingly.

8. There is also manifest error in this that the Court in like manner overruled others of the said exceptions (No. 52 and 53) to the said petition whereby the defendant objected that the said statutes of 1899 and 1903 respectively were so indefinitely framed and of such doubtful construction that they could not be understood either from the language in which they were expressed or from some other written law of the state and by reason of their failure to designate an offence by the plain import of their words the infliction of the penalties prescribed by the said statute would be the taking of property without due process of law contrary to the provisions of the said Constitution. And the said exception being overruled the defendant is by the said judgment made liable to the penalties imposed by the said statutes of 1899 and 1903 respectively and is thereby deprived of its property without due process of law accordingly.

1912 9. There is also manifest error in this that evidence having been adduced at the trial of the said cause that the Standard Oil Company from some time in the year 1882 owned a majority of the shares of the old Waters Pierce Company down to the incorporation of the defendant the Waters Pierce Oil Company on the 29th May 1900 and that on or about the 24th September 1900 a majority of the shares of the defendant the Waters Pierce Oil Company which had up to that time been held by H. C. Pierce in trust for the said Standard Oil Company (the same having been so issued to him upon the formation of the defendant company on account of the interest of the said Standard Oil Company in the old Waters Pierce Oil Company) were transferred to the said Standard Oil Company by an indorsement of the certificates therefor in blank by the said H. C.

Pierce without any evidence of the registration of any transfer of the same on the books of the defendant company until early in the year 1904 when the said Standard Oil Company caused the same to be transferred on the said books into the name of M. M. Van Beuren and evidence having been also adduced at the said trial that the old Waters Pierce Company carried on its business throughout the whole of Texas and in certain other states and in Mexico and obtained its supplies of refined oil almost exclusively from the Standard Oil Company and that the said Standard Oil Company did not carry on such business in the said territory in which the old Waters Pierce Company so carried on business and that the defendant the Waters Pierce Oil Company after acquiring the business of the old Waters Pierce Company as above mentioned carried on the said business in the same territory and in the same way without extending its business into other territory and that the said Standard Oil Company did not extend its business into the territory in which the defendant so carried on business the judge before whom the said cause was tried at the said trial although there was no other evidence of any such agreement or understanding between the defendant and the
1913 Standard Oil Company as next hereinafter mentioned or of any other act by the defendant in carrying any other such agreement or understanding into effect directed the jury (in paragraph VII of his charge) upon the said evidence that if they found that the defendant the Waters Pierce Oil Company entered into or became a party to an agreement or understanding with the Standard Oil Company on June 1, 1900, to fix or regulate the price in Texas of oil refined from petroleum and if they further found that the defendant remained or continued to be a party to the said agreement or understanding if any and persisted in carrying the same out in Texas on June 1, 1900, or any subsequent date or dates prior to March 31, 1903, and that the oil with reference to which the said agreement or understanding was so made and carried out was the subject of local as distinguished from interstate commerce the jury should return a verdict for the state and thereby say that they found in favor of the state upon the issues submitted for their consideration in paragraph seven (VII) of the Court's charge and further instructed the jury that each day between May 31, 1900, and March 31, 1903, during which the defendant remained a party to the agreement or understanding therein mentioned would constitute a separate and distinct violation of the anti-trust laws of Texas. And the said judge also directed the jury that the said statute of 1899 was in force on May 31, 1900, and thenceforth until March 31, 1903, and that the said statute of 1903 became effective on March 31, 1903, and has since continued in force and that if the jury should convict the defendant of any violation or violations of the said statute of 1899 they should specify in their verdict the date or days for which it was so convicted and further specify therein that as a result of such conviction its permit to do business in Texas should be forfeited and the amount of money which should be adjudged against it as penalties for such violations fixing the same at not less than $200 or more than $5,000 per day for each day that they should find it had so vio-

lated the law. And the jury in pursuance of the said
1914 directions found for the plaintiff against the defendant on the issues submitted to them in the said paragraph (VII) of the judge's charge for each of the days between May 31, 1900, and March 31, 1903, stating the same in their verdict as being 1033 days and fixed the penalties for all the said days as hereinafter mentioned and further found that the permit of the defendant to do business in Texas should be cancelled. By means whereof the jury found that any such agreement or understanding as above mentioned entered into between the old Waters Pierce Company and the said Standard Oil Company became an agreement or understanding on the part of the defendant the Waters Pierce Oil Company with the said Standard Oil Company as soon as the defendant acquired the property and business of the old Waters Pierce Company and conducted the said business in the same manner and in the same territory as the old Waters Pierce Company had done and without extending the said business into any other territory although the defendant had not otherwise than by its said acts entered into any such agreement or understanding and also that the defendant the Waters Pierce Oil Company having entered into such an agreement or understanding as mentioned in the said paragraph of the judge's charge although not in the state of Texas and having persisted in carrying the same out in Texas on the 1st June 1900 was guilty of a violation of the said law on every subsequent day including Sundays and holidays down to the 31st March 1903 although it did not on any such subsequent day or did not upon some of such subsequent days do any act in Texas in or towards carrying out the said agreement or understanding but only remained a party thereto. And by the judgment upon the said verdict upon the issues submitted to the jury in the said paragraph (VII) of the judge's charge the defendant the Waters Pierce Oil Company is deprived of its property without due process of law.

1915 10. There is also manifest error in this that upon the evidence mentioned in the last preceding paragraph without any other evidence or suggestion of such a combination or union as next hereafter mentioned the said judge also directed the jury (in paragraph VIII of his charge) that if they found that on June 1, 1900, or any date subsequent thereto and prior to March 31, 1903, the defendant had brought about or permitted any combination or union of its capital with the capital of the said Standard Oil Company whereby the price in Texas of such oil as mentioned is the said clause of the charge was sought to be fixed or regulated or would reasonably calculated to be fixed or regulated or whereby the trade in such oil in Texas was sought to be controlled or limited the jury should return a verdict for the state and thereby say that they found for the state upon the issues submitted for their consideration in paragraph eight (VIII) of the court's charge and further directed the jury that if the defendant became a party to a pool of the character mentioned in that paragraph each day between May 31, 1900, and March 31, 1903, that it remained a party to such pool would constitute a separate violation of the anti-trust laws of Texas and the jury in pur-

suance of the said directions found for the plaintiff against the defendant on the issues submitted to them in the said paragraph of the judge's charge for each of the days between May 31, 1900, and March 31, 1903, stating the same in their verdict as being 1033 days and in pursuance of the said directions and the other directions hereinbefore mentioned fixed the penalties for the violations of law of which the defendant was convicted by their verdict upon the issues submitted to them in the two paragraphs seven (VII) and eight (VIII) of the judge's charge at $1,549,500 and further found that the permit of the defendant to do business in Texas should be cancelled. By means whereof the jury found the defendant the
1916 Waters Pierce Oil Company guilty of having brought about or permitted such a combination or union of its capital with the capital of the Standard Oil Company as above mentioned by means of the acts of the said Standard Oil Company acquiring a majority of the shares of the old Waters Pierce Company long before the passage of the said statute of 1899 and before the defendant came into existence and in holding the said shares until the defendant was incorporated and acquired the property and business of the old Waters Pierce Company and then taking the beneficial interest in a corresponding majority of the shares of the defendant the Waters Pierce Oil Company for its interest in the old Waters Pierce Company in which acts of the said Standard Oil Company the defendant had no part and although none of the said acts were done in the state of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or union or for any of the supposed purposes thereof on some or any of the days for which it was so convicted. And by the judgment upon the said verdict upon the last mentioned paragraph (VIII) of the judge's charge the defendant the Waters Pierce Oil Company is deprived of its property without due process of law contrary to the provisions of the said Constitution and it was thereby decided that the said statute of 1899 was valid and not repugnant to the said Constitution whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provisions of the said Constitution forbidding the passage of any *ex post facto* law by any state.

11. There is also manifest error in this that upon the evidence mentioned or referred to in the next preceding paragraph hereof without any other evidence or suggestion of any such combination as next hereinafter mentioned and although it was agreed by the parties at the said trial for the purposes of this case that the said Standard Oil Company had from the time long before the
1917 passage of the said statute of 1903 owned a majority of the shares of the defendant the Waters Pierce Oil Company the said judge also directed the jury (in paragraph IX of his charge) that if they found that the defendant entered into a combination of its capital with the capital of the said Standard Oil Company for the purpose of creating in Texas or which tended to create in Texas or carry out in Texas restrictions in the free pursuit in that state of the business of selling such oil as is mentioned in the said paragraph of the charge or to fix maintain or increase the price of such

oil in Texas or to prevent or lessen competition in Texas in the sale of such oil and that the defendant remained or was a party to and acted under such combination on March 31, 1903, or any date subsequent thereto and prior to April 29th, 1907, the jury should return a verdict for the state and thereby say that they found for the state upon the issues submitted for their consideration in paragraph nine (IX) of the court's charge and further directed the jury that if the defendant became a party to a trust of the character mentioned in that paragraph of the charge each day between March 30, 1903, and April 29, 1907, that it remained a party to and acted under such trust would constitute a separate violation of the anti-trust laws of Texas and that if the jury should convict the defendant of any violations of the said statute of 1903 they should specify in the verdict the date or days for which it was so convicted and further specify therein that as a result of such conviction its permit to do business in Texas should be forfeited and the sum of money that should be adjudged against it as a penalty for such violations fixing the sum at $50 per day for each day that they should convict it of having violated the said law. And the jury in pursuance of the said directions found for the plaintiff against the defendant on the issues submitted to them by the said paragraph of the judge's charge

1918 for each of the days between April 1, 1903, and April 29, 1907, stating the same in their verdict as being 1488 days and fixed the penalties for all the said days as hereinafter mentioned and further found that the permit of the defendant to do business in Texas should be canceled by means whereof the jury found the defendant the Waters Pierce Oil Company guilty of having entered into such a combination as last above mentioned by means of the acts of the said Standard Oil Company in acquiring the said majority of the shares of the said Waters Pierce Oil Company long before the passage of the said statute of 1903 although none of the said acts were done in the state of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or for any of the supposed purposes thereof on some or any of the days for which it was so convicted and although the defendant had no means of requiring or inducing the said Standard Oil Company to part with the said majority of shares or any part thereof.

12. There is also manifest error in this that the said judge also directed the jury (in paragraph X of his charge) that if they found that the direction of the affairs of the defendant corporation and the affairs of the said Standard Oil Company was under the same management and control on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, and that they were placed under such management or control by their respectively authorized officers under such circumstances that such common management or control created or tended to create or carry out restrictions in the sale in Texas of such oil as is referred to in the said paragraph of the charge or to fix maintain or increase the price in Texas of such oil or to prevent or lessen in Texas the competition in the sale of such oil the jury should return a verdict for the state and thereby say that they found for the state on the issues submitted for their consideration in paragraph ten (X) of the court's charge and further

directed the jury that if the defendant entered into a
1919 monopoly of the character mentioned in that paragraph of the charge each day between March 30 1903 and April 29 1907 that it remained a party to such monopoly constituted a separate violation of the anti-trust laws of Texas. And although there was no evidence that the direction of the affairs of the defendant and the said Standard Oil Company was after the passage of the said statute of 1903 brought under the same management or control or was under the same management or control on the 31st March 1903 when the said statute was passed or on the first or second or any subsequent day thereafter or that the said Standard Oil Company had any power to bring the direction of the affairs of the said two corporations under the same control or management until the said majority of the shares in the defendant corporation were transferred on its books into the name of M. M. Van Beuren as hereinbefore mentioned in the year 1904 or that the said Standard Oil Company exercised any such power by doing so either before or after the same were so transferred or that any of the things supposed to have been done had been done in Texas except carrying on business there as hereinbefore mentioned the jury in pursuance of the said direction of the judge found for the plaintiff against the defendant on the issues submitted to them by the said paragraph ten (X) of the judge's charge for each of the days between April 1 1903 and April 29 1907 stating the same in their verdict as being 1488 days and fixed the penalties for all the said days as hereinafter mentioned and further found that the permit of the defendant to do business in Texas should be cancelled. By means whereof the jury found the defendant the Waters-Pierce Oil Company guilty of the offense of bringing the direction of its affairs under the same management and control as those of the said Standard Oil Company although it had had no part in doing so itself and although whatever was supposed to have been done to bring the direction of the affairs of the said two corporations under the same management and control had not been done in Texas and had been done before the passage of the said statute of 1903 or had not been done on some of the days for which it was so convicted and was not in fact done at all.

1920 13. There is also manifest error in this that the said judge also directed the jury (in paragraph XI of his charge) that if they found that the Standard Oil Company had on March 31st 1903 acquired a majority of the capital stock of the defendant the Waters-Pierce Oil Company and thereby effected a combination of the said corporations with the purpose and intention therein mentioned on the part of the managing officers and directors of the said Standard Oil Company the jury should return a verdict for the state and thereby say that they found in favor of the state upon the issues submitted for their consideration in paragraph eleven (XI) of the Court's charge and further directed the jury that each day between March 30 1903 and April 29 1907 that the defendant remained a party to such monopoly constituted a separated violation of the anti-trust laws of Texas. And although at the said trial no evidence was adduced that the said Standard Oil Company acquired on or after the 31st March 1903 such a majority of the said capital

stock or any shares necessary to make such majority or ever acquired any such shares within the state of Texas and it was agreed by the parties at the said trial that since a time long previous to the 31st March 1903 the said Standard Oil Company had owned more than a majority of the said capital stock the jury in pursuance of the said direction found for the plaintiff against the defendant upon the issues so submitted to them for each of the days between April 1 1903 and April 29 1907 stating the same in their verdict as being 1488 days and in pursuance of the said directions and the other directions hereinbefore mentioned fixed the penalties for the violations of law of which the defendant was convicted by their verdict upon the issues submitted to them in the three paragraphs nine (IX) ten (X) and eleven (XI) of the judge's charge at $74,400 and further found that the permit of the defendant to do business in Texas should be cancelled. By means whereof the jury found the defendant the Waters-Pierce Oil Company guilty of having effected a combination of itself and the said Standard Oil Company solely by reason of the acts of the said Standard Oil Company done long before the passage of the said statute of 1903 in ac-
1921 quiring the said majority of the shares of the said Waters Pierce Oil Company although none of the said acts were done in the state of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or for giving effect to the supposed purpose or intention of the managing officers of the said Standard Oil Company on some or any of the days for which the defendant was so convicted. And by the judgment upon the said verdict upon the issues submitted to the jury in the three last mentioned paragraphs of the judge's charge respectively the said Waters Pierce Oil Company is deprived of its property without due process of law contrary to the provisions of the said Constitution and it was thereby decided that the said statute of 1903 was valid and not repugnant to the said Constitution whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provision of the said Constitution forbidding the passage of any *ex post facto* law by any state.

14. There is also manifest error in this that the said judge also declared — his opinion to the jury (in paragraph XI of his charge) that if the said Standard Oil Company acquired a majority of the capital stock of the defendant the Waters Pierce Oil Company a combination of the said two corporations would be thereby effected and with that direction he left the said issues to the jury whereas a combination of the said two corporations would not be thereby effect- And the jury in pursuance of the said direction found for the plaintiff against the defendant upon each of the issues submitted to them respectively in the four paragraphs (eight (VIII) nine (IX) ten (. and eleven (XI) of the judge's charge and thereby found the defendant guilty of having effected such combination solely by reason of the acts of the said Standard Oil Company in acquiring the said majority of shares although none of the said acts were done in the state of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination
1922 or for giving effect to any supposed purpose or intention thereof on some or any of the days for which the defendant

was so convicted. And by the judgment upon the said verdict upon the issues submitted to the jury in the four last mentioned paragraphs of the judge's charge respectively the defendant the said Waters Pierce Oil Company is punished for an act which it could not control and an offense that it could not commit and is thereby deprived of its property without due process of law contrary to the provision of the said Constitution.

15. There is also manifest error in this that the said judge upon the trial of the said cause arbitrarily and without any regard to the rules of law admitted evidence of (1) the incorporation of the Standard Oil Company of Ohio on or about the 10th January 1870; (2) the incorporation of the old Waters Pierce Oil Company in Missouri on the 1st May 1878 and the increase of its capital on the 13th June, 1882; (3) the agreement of the 2nd January, 1882, by which the Standard Oil Trust was formed and to which the old Waters Pierce Oil Company or the defendant the Waters Pierce Oil Company or H. C. Pierce who owned about two-fifths of the shares in these two companies never became a party; (4) the incorporation of the Standard Oil Company of New Jersey herein referred to as the Standard Oil Company on the 1st August, 1882; (5) the ownership by the Standard Oil Company of the majority of the shares of several other companies as stated in the agreement of counsel designated Stipulation No. 1; (6) the judgment in favor of the state of Texas against the old Waters Pierce Company on the 15th June, 1897, for the forfeiture of its permit to do business in Texas which judgment was affirmed by this Court on or about the 19th March, 1900, (177 U. S., 28) and also (7) the testimony of several witnesses relating to the doings and agreements of the agents of corporations other than the defendant and of the agents of the old Waters Pierce Company prior to the incorporation of the defendant the Waters Pierce Oil Company and prior to the 1st June, 1900, and to
1923 the doings and agreements of the defendant's agents and the agents of other corporations outside the state of Texas and to the doings and agreements of individuals both prior and subsequent to the 1st June, 1900, and both outside and within the state of Texas (to all of which evidence and testimony respectively counsel for the defendant duly objected at the trial as appears by the record.) And although there was not any other evidence nor any evidence whatever of an agreement at any time between the defendant or the governing officers of the defendant and any other persons whatever relating to the management of the defendant's business yet the said judge arbitrarily and without any regard to the rules of law and intending that the jury should identify the defendant with the old Waters Pierce Company as charged in the petition of the state and should convict the defendant of violations of the said anti-trust laws upon the issues submitted to them in the five paragraphs last above mentioned of the judge's charge without any legal evidence of any such violation and should for that purpose consider irrelevant evidence under color of first finding a conspiracy of which there was no evidence whatever overruled all the objections of the defendant to the admission of the said evidence and directed the jury (in the division V of his charge) that if they found from the other evidence

in the case independent of all declarations or statements made by any person or persons except their evidence given as witnesses personally or by deposition that on June 1, 1900, there was formed or existed an agreement between the governing officers of the defendant and the governing officers of any of the other corporations alleged in the state's petition to be co-conspirators with the defendant relating to the management of the defendant's business or between the governing officers of the defendant and any of the individuals alleged in the State's petition to be co-conspirators with the defendant relating to the management of the defendant's business then the jury might consider for what if anything they thought it worth
1924 such acts or declarations of all the parties to the said agreement and such acts and declarations of their authorized agents if any as were done or made during the existence of such agreement and in furtherance of its execution for the purpose of determining the character of such agreement and whether or not it contemplated a violation by the defendant of the anti-trust laws of Texas but that none of the said evidence could be considered by the jury for any other purpose whatever and none of it could be so considered by the jury against the defendant for the said purposes except such of it if any as they should think proper to be considered when tested by the rules so stated relating to its competency. And also directed the jury (in the division XIII of his charge) that they might consider so far as it tended to establish some one or more of the issues submitted for their consideration in the said five paragraphs (VII to XI) of his charge the evidence introduced before them that the defendant had given rebates and discounts in the course of its dealings and that the defendant had made contracts and entered into understandings other than those submitted for their consideration in the said five paragraphs of the charge and also the evidence introduced before them of the general course of dealings of the defendant in Texas and elsewhere including some of its business methods in meeting competition although he directed them that none of this evidence showed or tended to show any violation of the anti-trust laws of Texas unless it tended to establish some one or more of the said issues so submitted for their consideration. And the verdict was accordingly given for the State upon the said issues submitted to the jury whereas according to due process of law it ought to have been given for the defendant. And upon the appeal of the defendant the Court of Civil Appeals in affirming the said judgment unreasonably and wilfully disregarded the questions thereby raised
under the said Constitution as well as the rules of evidence ac-
1925 cording to the usage and practice prevailing in Texas. And the defendant is thereby deprived of its property without due process of law contrary to the provisions of the said Constitution.

16. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 5) as follows:

"You are instructed that inasmuch as the defendant is a corporation incorporated and existing under the laws of the state of Missouri the question of the legality of the ownership of a majority of its stock by the Standard Oil Company is not an issue in

this case and in this connection you are further instructed that the anti-trust laws of Texas being designed merely to prohibit unlawful combinations or agreements having the purpose of fixing and regulating prices and other forbidden purposes denounced by such laws could not be violated by the mere ownership by the Standard Oil Company of a majority of the stock of the defendant."

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the anti-trust laws of Texas merely on account of the acts of the Standard Oil Company in owning in another state a majority of the stock of the defendant. And the verdict having been given for the state the defendant is by reason of the said refusal deprived of its property by the said judgment without due process of law contrary to the provisions of the said Constitution.

17. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 7) as follows:

"You are instructed that it is admitted by the defendant that the Standard Oil Company of New Jersey acquired a majority of the shares of stock of the defendant company on or about the 4th day of September 1900 and thereafter continued to own the same.

Therefore the Court further instructs the jury that the ac-
1926 quiring and owning of said chares of stock by said Standard Oil Company did not constitute a violation of the act approved March 31st, 1903, even though the jury may believe that the said Standard Oil Company voted said shares of stock at the meeting of the stockholders of the defendant company for the election of director of said defendant company."

And there is also manifest error in this that the said judge also refused to direct the jury as requested by the defendant (Special Charges refused No. 24):

"You are instructed that since the Standard Oil Company acquired a majority of the stock of the defendant prior to the enactment of the anti-trust act of 1903 and since the defendant company being a corporation created by the laws of Missouri the acquisition of such stock by the Standard Oil Company cannot be inquired into by the courts of Texas but must be in all things treated as legal and valid the inhibition of the anti-trust act of 1903 against any corporation's acquiring the shares of stock of any other corporation for the purpose of preventing or lessening competition or tending to affect or lessen competition can have no application to this case."

Whereas the said directions ought respectively to have been given so that the jury might not convict the defendant of violation of the said statute of 1903 upon any of the three issues submitted to them as aforesaid in the paragraphs nine (IX) ten (X) and eleven (XI) of the judge's charge on account of the acts of the Standard Oil Company in acquiring the said majority of shares before the passage of the said statute of 1903. And the verdict having been given for the State the defendant is by reason of the said refusals deprived of its property by the said judgment without due process

of law and subjected to the said penalties by virtue of an *ex post facto* law passed by the state of Texas contrary to the provisions of the said Constitution.

1927 18. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 9) as follows:

"You are instructed that it is not in violation of the laws of the state of Texas and has not been a violation of such laws or any laws at any time since May 31st, 1900, for the Standard Oil Company of New Jersey or any other person or corporation to own a part of the stock of the defendant Waters Pierce Oil Company and you will therefore disregard any evidence that has been introduced before you upon this subject."

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the anti-trust laws of Texas merely on account of the acts of the Standard Oil Company in ow-ing in another state a majority of the stock of the defendant. And the verdict having been given for the state the defendant is by reason of the said refusal deprived of its property by the said judgment without due process of law contrary to the provisions of the said Constitution.

19. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges No. 13) as follows:

"You are instructed that in view of the fact that the Standard Oil Trust Agreement of January 2nd, 1882, and the supplemental agreement thereto of January 4th, 1882, were executed long prior to the creation of the defendant and there is no evidence showing that the defendant ever adopted said agreement you will not consider the execution of said agreement or the contents of the same as in any wise affecting this defendant."

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the anti-trust laws of Texas on account of this agreement between other persons made long before the defendant came into existence and

1928 long before the passage of the said anti-trust laws. And the verdict having been given for the State the defendant is by reason of the said refusal deprived of its property by the said judgment without due process of law contrary to the provisions of the said Constitution.

20. There is also manifest error in this that the penalties of $1,549,500 and $74,400 assessed by the jury are respectively so plainly excessive that the defendant is thereby deprived of its property without due process of law.

21. There is also manifest error in this that the Court upon hearing the said exceptions of the defendant to the said petition in manner aforesaid overruled others of the said exceptions (Nos. 28 and 38) whereby the defendant objected that the recovery of penalties under the said statutes respectively for acts done more than two years before the commencement of the said action was barred by article 219 of the Code of Criminal Procedure of Texas.

And in this that the Court also overruled in like manner others of the said exceptions (Nos. 30, 31, 40, 41) whereby the defendant objected respectively that if the said limitation was not available to it the defendant would be denied the equal protection of the laws contrary to the provisions of the said Constitution and that the said statutes of 1899 and 1903 would respectively be invalid by reason thereof. And in this that the Court also in like manner overruled others of the said exceptions (Nos. 32 and 42) whereby the defendant objected that the recovery of the said penalties for acts done more than two years before the commencement of the said action was barred by article 3354 of the Revised Statutes of Texas. And in this that the Court also in like manner overruled others of the said exceptions (Nos. 34 and 44) whereby the defendant objected that if the said limitation was not available to it the defendant was denied the equal protection of the laws contrary
1929 to the provisions of the said Constitution and that the said statutes of 1899 and 1903 were invalid respectively by reason thereof. And in this that the Court also in like manner overruled others of the said exceptions (Nos. 35 and 37) whereby the defendant objected respectively that the recovery of penalties under the said statute of 1899 for acts done more than four years before the commencement of the said action was barred by article 3358 of the said Revised Statutes and that if the said limitation was not available to it the defendant was denied the equal protection of the laws contrary to the provisions of the said Constitution. And in this that the judge also refused with like effect and consequences to direct the jury as requested by the defendant in the Special Charges refused Nos. 1, 2 and 3 respectively as regards the said limitations which were duly pleaded in the defendant's answer.

22. There is also manifest error in this that the Court in like manner overruled another of the said exceptions (No. 10) to the said petition whereby the defendant objected that the parts thereof which seek to hold the defendant liable to penalties and a forfeiture of its said permit because of the alleged agreement or understanding whereby in consideration of the defendant purchasing all its supplies from the said Standard Oil Company the said Standard Oil Company agreed that the defendant should be permitted to sell its products in Texas without competition or interference by the said Standard Oil Company because it appears from the petition that the said Standard Oil Company was and is a citizen of New Jersey and never obtained a permit to do business in Texas and it is not alleged that it ever contemplated entering Texas to do business therein or could have obtained a permit so to do and therefore an agreement such as alleged if made could not be construed as violating any laws of Texas without giving to such laws an extra-territorial effect and operation binding upon citizens of other states and with respect to inter-state commerce and in violation of the said Consti-
1930 tution and the defendant moved the Court to strike out the said allegations with respect to the said alleged agreement and understanding. And the said exception being overruled the

defendant is by the said judgment made liable to the penalties imposed by the said laws on account of the said alleged agreement or understanding contrary to the provisions of the said Constitution relating to commerce among the several states and is so deprived of its property without due process of law.

23. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 23) as follows:

"You are instructed that if you believe from the evidence that the defendant has entered into any agreement by which it has bound itself to transact business within a certain territory in the United States, including the State of Texas, and that in pursuance of such agreement the defendant has been and is transacting business in the State of Texas, the making of such agreement and the transaction of business thereunder by the defendant cannot be considered as in violation of the Anti-Trust Laws of Texas, and in this connection you are instructed that the defendant always had and now has the right to confine its business operations to any territory desired by it and that the fact that the defendant has not extended its operations to a broader field would not render the defendant guilty of violating the Anti-Trust Laws of Texas."

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the said laws by reason of any such agreement or understanding as alleged as aforesaid by which the said Standard Oil Company agreed that the defendant should be permitted to sell its products in Texas without competition or interference by the said Standard Oil Company in consideration of the defendant purchasing all its supplies
1931 from the said Standard Oil Company and which agreement or understanding related to commerce among the several states. And the verdict having been given for the State the defendant is by the said judgment deprived of its property without due process on account of statutes passed by the State of Texas regulating commerce among the several states contrary to the provisions of the said Constitution in that behalf.

24. There was also manifest error in this that the said judge at the said trial arbitrarily and without any regard to the rules of law and for the purpose of exciting and inflaming the prejudices of the jury against the defendant admitted in evidence against the objection of the defendant proof of the Standard Oil Trust agreement of 1882 in the plaintiff's petition set out which was made many years before the incorporation of the defendant and to which it was admitted that the defendant never became a party. And in this that the said judge in like manner admitted in evidence the paragraphs (3rd, 4th, 5th, 6th, 7th and 8th) of the agreement of counsel called Stipulation No. 1 setting out subject to all legal objections that the Standard Oil Company of New Jersey owned a majority of the shares of the companies therein mentioned by the names of the Standard Oil Company of Indiana, New York and Kentucky respectively and of the Continental Oil Company and the Republic Oil Company at the times and in the manner therein mentioned and

that the said companies did not transact any business in Texas all of which were matters in which the defendant was in no way concerned and had no possible relation to any of the questions involved in this case. And also in this that the said judge in like manner admitted in evidence that the defendant had given rebates and discounts to certain dealers and had sold oil at different prices in different localities in Texas which evidence was irrelevant to all the issues in the case. And also in this that the said judge in like man-
1932 ner admitted in evidence the testimony of the witness C. W. Cahoon to the effect that at points in Texas where there was competition the defendant sometimes sold oils at less than at points where there was no competition which testimony had no tendency to show any violation of the laws of Texas and could have no effect except to prejudice the jury. And also in this that the said judge in like manner admitted in evidence the testimony of the said C. W. Cahoon to the effect that for about 60 days in 1903 certain brands of oil of grades inferior to that known as Eupion oil had been sold by the defendant as Eupion oil which evidence was frivolous and irrelevant. And also in this that the said judge in like manner admitted in evidence the testimony of the witness A. W. Clem to the effect that the old Waters Pierce Company in 1891 cut the prices of oil at Seymour and other places in Texas and also that the old Waters Pierce Company in 1894 after it bought out the business of the same witness advanced the selling-price of oil from 9½ cents to 22 cents per gallon which testimony did not relate in any way to the defendant or its doings or to any issue involved in this case. And in this that the said judge in like manner admitted in evidence the testimony of the witness Royer Campbell to the effect that in 1894 when he quit buying from the old Waters Pierce Company and bought from other persons in San Antonio the old Waters Pierce Company immediately cut the price of oil from 16 or 17 cents to 8 and 10 cents per gallon and also his testimony as to the character of war-fare and competition that the old Waters Pierce Company carried on with him in 1894 which evidence did not relate in any way to the defendant or anything in question in this case. And the said judge permitted the jury to consider all the said evidence so admitted so far as it might seem to establish any of the said issues submitted for their consideration. And by the admission of the said several pieces of evidence respectively the prejudices of the jury were excited and inflamed against the defendant and their attention was diverted from the true issues in the case
1933 and the defendant was prevented from having a trial of the said issues according to the due course of law. And by the judgment upon the verdict upon the issues submitted to the jury as aforesaid the defendant is deprived of its property without due process of law contrary to the provision of the said Constitution.

25. There is also manifest error in this that the Court appointed a receiver of the property and assets of the defendant and the bond of such receiver was received and approved as appears by the said record after the judgment given upon the said verdict was suspended by the proceedings by way of appeal on the part of the defendant from the

said judgment although the Court had no authority to appoint such receiver otherwise than as a consequence of the said judgment and for the purpose of carrying the same into effect. And the defendant was thereby deprived of its property without due process of law contrary to the provisions of the said Constitution.

26. There is also manifest error in this that the judgment given upon the said verdict and after notice of appeal therefrom by the defendant according to law the Court acting under color of the Texas statute of 1907 c. 87 but arbitrarily and wilfully disregarding its provisions and purposes appointed the said receiver for the purpose of depriving the defendant of its property and business and not for any purpose for which the appointment of a receiver was authorized by the said statute and on the alleged ground that the said judgment had been rendered against the defendant for violation of the said anti-trust laws and that newspaper interviews with the counsel for the defendant had been brought to the attention of the Court in which the said counsel had declared the purpose of the defendant to appeal from the said judgment and to continue to carry on its business in
the same manner as theretofore and without any evidence
1934 being submitted to the Court in connection with the application for the appointment of such receiver. And the Court disregarding the provisions of the said statute and the due course of law made the said appointment of a receiver not because any interest of the state seemed to require such action but for the pretended purpose of preventing the defendant from a continued violation of the law although the Court knew that the defendant had appealed from the said judgment and denied any violation on its part of the said anti-trust laws and although the court assumed as declared by the Court at the time of such appointment that the defendant would file its proper supersedeas bond upon the said appeal and had a right to do so within the time provided by law all of which appears by the bill of exceptions of the defendant as to matters connected with the appointment of the receiver which bill of exceptions was signed and allowed by the judge who held the said court at the time of the said proceedings. And the defendant by the appointment of the said receiver for such purpose and in such circumstances is deprived of its property without due process of law contrary to the provisions of the said Constitution.

27. There is also manifest error in this that the Court decided that the said statute of 1907 under color of which the said receiver was so appointed was valid and not repugnant to the said Constitution although the statute was passed after the commencement of the said action and provided that when any law of the said state including any of the said Anti-Trust Laws for the violation of which fines or penalties or forfeitures were provided had been theretofore violated or should be violated before the taking effect of the said statute by any corporation the said state should have a lien to secure the payment of such fine, penalties and costs from the time when the said statute took effect on all property of such corporation within the said state or which should thereafter become or be brought within the

said state and also provided for the appointment of a receiver
1935 for such corporation in the cases therein mentioned but did not provide for any lien or authorize the appointment of a receiver in the case of a violation of any of the said laws by any persons other than a corporation. Whereas it ought to have been decided that the said statute was invalid and repugnant to the provisions of the said Constitution forbidding the passage of any *ex post facto* law by any state and was also invalid because the defendant was thereby denied the equal protection of the laws and deprived of its property without due process of law contrary to the provisions of the said Constitution.

28. There is also manifest error in this that after judgment was improperly given upon the said verdict as aforesaid for the plaintiff the court appointed a receiver of the property and assets of the defendant the Waters Pierce Oil Company as specified in the orders appointing a receiver whereas the Court ought not to have appointed such receiver. And by the appointment of such receiver the defendant is deprived of its property without due process of law contrary to the provisions of the said Constitution.

And the said Waters Pierce Oil Company prays that the said judgment and order and the judgment affirming the same respectively for the errors aforesaid and others in the record and proceedings aforesaid may be reversed annulled and altogether held for nothing and that it may be restored to all things which it hath lost by occasion of the said judgment and order and the affirmance thereof as aforesaid.

MOORFIELD STOREY,
J. L. THORNDIKE,
J. D. JOHNSON,
Counsel for the Plaintiff in Error.

Endorsed: Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Mar. 30, 1908, R. H. Connerly, Clerk. (4212 Assignment of Errors.)

1936 *Copy.*

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Court of Civil Appeals for the Third Judicial District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Civil Appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Waters Pierce Oil Company incorporated under the laws of Missouri, Appellant, and the State of Texas, appellee, which judgment affirmed a judgment of the District Court of Travis County

upon a verdict against the Appellant and other proceedings therein being cause No. 4212, in the said Court of Civil Appeals, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Waters Pierce Oil Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command
1936½ you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of March, in the year of our Lord one thousand nine hundred and eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

To operate as a supersedeas on giving bond for one thousand ($1000) dollars.

Allowed by
EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

Endorsed: Copy of Writ of Error lodged for the Defendant in Error. Filed In Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Mar. 30th, 1908. R. H. Connerly, Clerk.

1937 Know all men by these presents, That we, the Waters Pierce Oil Company, incorporated under the laws of Missouri, as principal, and the American Surety Company of New York incorporated under the laws of New York, as sureties, are held and firmly bound unto the State of Texas in the full and just sum of one thousand dollars, to be paid to the said State of Texas or its certain attorney, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators,

jointly and severally, by these presents. Sealed with our seals and dated this twenty-seventh day of March, in the year of our Lord one thousand nine hundred and eight.

Whereas, lately at a Court of Civil Appeals for the Third Judicial District of Texas, in a suit depending in said court, between the said Waters Pierce Oil Company, Appellant, and the State of Texas, Appellee, being cause No. 4212 in the said court, a judgment was rendered against the said Waters Pierce Oil Company affirming a judgment of the District Court of Travis County upon a verdict against the said Appellant and other proceedings therein. And the said Waters Pierce Oil Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Texas citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof.

Now, the Condition of the Above Obligation is Such, That if the said Waters Pierce Oil Company shall prosecute the said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

WATERS PIERCE OIL CO.,
By J. D. JOHNSON, *Attorney.*

Sealed and delivered in presence of

R. B. LENNON,
E. K. COSTELLO.
As to all parties.

[Seal Waters Pierce Oil Co., St. Louis, Mo.]

1938

AMERICAN SURETY COMPANY OF NEW YORK,
[SEAL.] By A. ADAMS, *Resident Vice-President.*

Attest:

CLAUDE B. BROWN,
Resident Assistant Secretary.

Approved by—

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

March 27th, 1908.

[Seal of the United States.]

Endorsed: Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Mar. 30, 1908. R. H. Connerly, Clerk.

UNITED STATES OF AMERICA, *ss:*

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Civil Appeals for the Third Judicial District of Texas in cause No. 4212, in the last mentioned court, wherein the Waters Pierce Oil Company incorporated under the laws of Missouri is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Associate Justice of the Supreme Court of the United States, this twenty-seventh
1939 day of March, in the year of our Lord one thousand nine hundred and eight.

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

On this 30th day of March, in the year of our Lord one thousand nine hundred and eight, personally appeared Coley White before me, the subscriber, a Notary Public within and for Travis County, State of Texas, said White being an adult person and being duly sworn by me, makes oath that he delivered a true copy of the within citation to Thomas M. Campbell, the Governor of the State of Texas, on said day and also delivered a true copy of the within citation to Robert Vance Davidson, the Attorney General of said State of Texas, on said day and that he the said White is a duly appointed, qualified and acting Deputy under Eugene Nolte the United States Marshal for the Western District of Texas and as such Deputy served said copies.

EUGENE NOLTE,
U. S. Marshall, Western District of Texas,
By COLEY WHITE, *Deputy.*

Sworn to and subscribed the 31st day of March, A. D. 1908.

[SEAL.] ROSALIE DORSER,
Notary Public, Travis Co., Texas.

Endorsed: Came 3/30/08 5 P. M. 3/30/08 6 P. M. Filed in Court of Civil Appeals 3rd Supreme Judicial District Austin, Texas, Apr. 8, 1908, R. H. Connerly, Clerk.

1940 *Bill of Costs in Court of Civil Appeals, at Austin.*

No. 4212.

WATERS PIERCE OIL COMPANY
vs.
THE STATE OF TEXAS.

From Travis County.

Filing record	.5
Docketing cause	.5
Appearances	1.0
Filing briefs	1.0
Filing and entering motions (2)	.7
Orders (6)	3 0
Filing 31 extra papers	3.1
Continuance	.2
Judgment	1.0
Taxing costs	.5
Mandate	1.5
Recording opinion	18.0
Certified copy bill of costs	.7
Certified copy orders to Supreme Court	2.0
Notices (33)	16.5
Copy of motion	14.1
Issuing 1 precept	1.0
Sheriff's fees	1.0
Supreme Court Costs (State)	8.0
Transcript to Supreme Court United States	$916.4
Total	990.8

1941 I, R. H. Connerly, Clerk of the Court of Civil Appeals o the Third Supreme Judicial District of The State of Texa do hereby certify that the foregoing 1940 pages contain true and correct copies of the transcript from the District Court of Travi County; the Stenographer's Report, Original Papers sent up with the record, Opinon of Court of Civil Appeals, and its judgment motion for rehearing in Court of Civil Appeals and order over ruling ame, the judgment of the Supreme Court of Texas refusing a writ of error and bill of costs in Sup. Court of Texas, Assignments of error in U. S. Supreme Court, Duplicate writ of error of Supreme Court of The United States, Appeal bond to Sup. Court of the United States, Citation from United States Supreme Court, Bill of costs in Court of Civil Appeals, and that the two original papers, the Writ of error and the Citation are hereto attached, after this certificate, all in the cause in said Court of Civil Appeals entitled—Waters Pierce Oil Company, Appellant *vs.* The State of Texas, Appellee, No. 4212, appealed to said Court of Civil Appeals from the District

Court of The Twenty-Sixth Judicial District, of Texas, Travis County, and all of said papers now on file in my office. Witness my hand and the seal of said court at Austin, Texas, this the 17th day of April, A. D. 1908.

[Seal Court of Civil Appeals of the State of Texas.]

R. H. CONNERLY,
Clerk of Court of Civil Appeals,
3rd Sup. Jud. Dist. of Texas.

1942 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Court of Civil Appeals for the Third Judicial District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Civil Appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Waters-Pierce Oil Company, incorporated under the laws of Missouri Appellant and the State of Texas Appellee which judgment affirmed a judgment of the District Court of Travis County upon a verdict against the Appellant and other proceedings therein being cause No. 4212 in the said Court of Civil Appeals wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction
1943 of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Waters-Pierce Oil Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of March, in the year of our Lord one thousand nine hundred and eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

To operate as a supersedeas on giving bond for one thousand (1000) Dollars.

Allowed by

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

1944 [Endorsed:] Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Mar. 30 1908. R. H. Connerly, Clerk.

1945 UNITED STATES OF AMERICA, *ss:*

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Civil Appeals for the Third Judicial District of Texas in cause No. 4212 in the last-mentioned Court wherein the Waters-Pierce Oil Company incorporated under the laws of Missouri is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Associate Justice of the Supreme Court of the United States, this twenty-seventh day of March, in the year of our Lord one thousand nine hundred and eight.

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

On this 30th day of March, in the year of our Lord one thousand nine hundred and eight, personally appeared Coley White before me, the subscriber, a Notary Public within and for Travis County State of Texas, said White being an adult person and being duly sworn by me makes oath that he delivered a true copy of the within citation to Thomas M. Campbell the Governor of the State of Texas on said day and also delivered a true copy of the within citation to Robert Vance Davidson the Attorney General of said State of Texas on said day and that he the said White is a duly appointed, qualified

and acting Deputy under Eugene Nolte the United States Marshal for the Western District of Texas and as such Deputy served said copies.

EUGENE NOLTE,
U. S. Marshal, Western District of Texas,
By COLEY WHITE, *Deputy.*

Sworn to and subscribed the 31st day of March, A. D. 1908.

[Seal Notary Public, County of Travis, Texas.]

ROSALIE DORSER,
Notary Public, Travis Co., Texas.

1946 [Endorsed:] Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Apr. 8 1908. R. H. Connerly, Clerk.

Endorsed on cover: File No. 21,130. Texas court of civil appeals, third supreme judicial district. Term No. 359. The Waters-Pierce Oil Company, plaintiff in error, *vs.* The State of Texas. Filed April 23d, 1908. File No. 21,130.